

**Fill in this information to identify the case:**

Debtor Windstream Communications, LLC

United States Bankruptcy Court for the: Southern District of New York  
(State)

Case number 19-22433

**Official Form 410  
Proof of Claim**

04/16

**Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.**

**Filers must leave out or redact** information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

**Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.**

**Part 1: Identify the Claim**

<b>1. Who is the current creditor?</b>	<u>ABQ Centre Investments, LLC</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
<b>2. Has this claim been acquired from someone else?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
<b>3. Where should notices and payments to the creditor be sent?</b>  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<b>Where should notices to the creditor be sent?</b>	<b>Where should payments to the creditor be sent? (if different)</b>
	<u>ABQ Centre Investments, LLC</u>	
	<u>Kyle Armstrong</u>	
	<u>P.O. Box 1973</u>	
	<u>Roswell, New Mexico 88202, USA</u>	
	Contact phone <u>575-623-2999</u>	Contact phone _____
	Contact email <u>kaa@armstrongenergycorp.com</u>	Contact email _____
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	
<b>4. Does this claim amend one already filed?</b>	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on <u>5/8/2019</u> MM / DD / YYYY	
<b>5. Do you know if anyone else has filed a proof of claim for this claim?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_\_ \_

7. How much is the claim? \$ 106500.83. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.  
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).  
Limit disclosing information that is entitled to privacy, such as health care information.  
Lease Rejection Damages

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature or property:**  
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amount should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ 0

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.	\$ _____

\* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

**Part 3: Sign Below**

**The person completing this proof of claim must sign and date it. FRBP 9011(b).**

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

**A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.**

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 05/08/2019  
MM / DD / YYYY

/s/William R. Keleher  
Signature

**Print the name of the person who is completing and signing this claim:**

Name William R. Keleher  
First name Middle name Last name

Title Attorney

Company Smidt, Reist and Keleher, PC  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 4811 A Hardware Dr NE, Suite 4, Albuquerque, New Mexico, 87109

Contact phone 5058302200 Email wkeleher@srklawnm.com



# KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 759-8815 | International (424) 236-7262

<b>Debtor:</b> 19-22433 - Windstream Communications, LLC		
<b>District:</b> Southern District of New York, White Plains Division		
<b>Creditor:</b> ABQ Centre Investments, LLC Kyle Armstrong P.O. Box 1973  Roswell, New Mexico, 88202 USA <b>Phone:</b> 575-623-2999 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> kaa@armstrongenergycorp.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Authorized agent	
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> Yes, 5/8/2019 <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> Lease Rejection Damages	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> 106500.83	<b>Includes Interest or Charges:</b> No	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> Yes, 0 <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>	
<b>Submitted By:</b> William R. Keleher on 08-May-2019 2:35:16 p.m. Eastern Time <b>Title:</b> Attorney <b>Company:</b> Smidt, Reist and Keleher, PC		
<b>Optional Signature Address:</b> William R. Keleher 4811 A Hardware Dr NE, Suite 4  Albuquerque, New Mexico, 87109  <b>Telephone Number:</b> 5058302200 <b>Email:</b> wkeleher@srklawnm.com		

Tenant: Windstream  
Term: 12/1/2015 - 2/28/2021

		Base Rent	Current Oper Exp
1	Mar-19	\$0.00	\$25.00
2	Apr-19	\$2,306.67	\$25.00
3	May-19	\$4,613.27	\$25.00
4	Jun-19	\$4,613.27	\$25.00
5	Jul-19	\$4,613.27	\$25.00
6	Aug-19	\$4,613.27	\$25.00
7	Sep-19	\$4,613.27	\$25.00
8	Oct-19	\$4,613.27	\$25.00
9	Nov-19	\$4,613.27	\$25.00
10	Dec-19	\$4,730.06	\$25.00
11	Jan-20	\$4,730.06	\$25.00
12	Feb-20	\$4,730.06	\$25.00
13	Mar-20	\$4,730.06	\$25.00
14	Apr-20	\$4,730.06	\$25.00
15	May-20	\$4,730.06	\$25.00
16	Jun-20	\$4,730.06	\$25.00
17	Jul-20	\$4,730.06	\$25.00
18	Aug-20	\$4,730.06	\$25.00
19	Sep-20	\$4,730.06	\$25.00
20	Oct-20	\$4,730.06	\$25.00
21	Nov-20	\$4,730.06	\$25.00
22	Dec-20	\$4,846.85	\$25.00
23	Jan-21	\$4,846.85	\$25.00
24	Feb-21	\$4,846.85	\$25.00
		<hr/>	
		\$105,900.83	\$600.00
<b>Total</b>		<b>\$106,500.83</b>	

**OFFICE BUILDING LEASE**

**ALBUQUERQUE CENTRE  
6001 Indian School Road, N.E.  
Albuquerque, NM 87110**

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OFFICE BUILDING LEASE

ALBUQUERQUE CENTRE  
6001 Indian School Road, N.E.  
Albuquerque, NM 87110

This Lease between **Albuquerque Centre Ltd. Co.**, a New Mexico limited liability company ("Landlord"), and **Windstream Communications, LLC**, a Delaware limited liability company ("Tenant"), is dated 9/22 2015 for reference purposes.

1. **LEASE OF PREMISES.** In consideration of the Rent (as defined at Section 5.4) and the provisions of this Lease, Landlord leases to Tenant and Tenant leases from Landlord the Premises shown on the floor plan attached hereto as *Exhibit A*, and further described in Section 21. The Premises are located within the Building and Project described in Section 2k. Tenant shall have the non-exclusive right (unless otherwise provided herein) in common with Landlord, other tenants, subtenants and invitees to use of the Common Areas (as defined at Section 2e).
2. **DEFINITIONS.** As used in this Lease, the following terms shall have the following meanings:
  - a. Base Rent (subject to adjustment): \$ See Addendum F (\$ ) for the Lease term.
  - b. Base Year: The calendar year of 2016.
  - c. Broker(s): Landlord's: Cauwels & Stuve Realty & Development Advisors LLC  
Tenants: Partners National Corporate Real Estate Services, Inc.
  - d. Commencement Date: The latter of i) November 1, 2015 or ii) substantial completion of the Tenant Improvements.
  - e. Common Areas: The building lobbies, common corridors and hallways, restrooms, parking areas, stairways, elevators and other generally understood public or common areas. Landlord shall have the right to regulate or restrict the use of the Common Areas.
  - f. Expense Stop: (fill in if applicable): Base year 2016.
  - g. Expiration Date: See Addendum F unless otherwise sooner terminated in accordance with the provisions of this Lease.
  - h. Index (Section 5.2): United States Department of Labor, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers, Dallas Region Average, Subgroup "all items" (1967 = 100).
  - i. Landlord's Mailing Address: 8814 Horizon Blvd. N.E. # 400, Albuquerque, New Mexico 87113.  
Tenant's Mailing Address: 4001 N Rodney Parham Road, Little Rock, AR 72212
  - j. Monthly installments of Base Rent (initial): \$ See Addendum F per month.
  - k. Premises: That portion of the Building containing approximately 2,803 square feet of Rentable Area, shown in *Exhibit A* located on the Fifth (5<sup>th</sup>) floor of the Building and known as Suite 510.
  - l. Project: The building of which the Premises are a part ("Building") and any other buildings or improvements on the real property ("Property") located at 6001 Indian School Road, N.E., Albuquerque, New Mexico 87110, and further described at *Exhibit B*. The Project is known as ALBUQUERQUE CENTRE.
  - m. Parking: Tenant shall be permitted to park 9 cars on a non-exclusive basis in the area(s) designated by Landlord for parking. Tenant shall abide by any and all parking regulations and rules established from time

to time by Landlord or Landlord's parking operator. Landlord reserves the right to separately charge Tenant's guests and visitors for parking.

- n. Rentable Area: As to both the Premises and the Project, the respective measurements of floor area as may from time to time be subject to lease by Tenant and all tenants of the Project, respectively, as determined by Landlord and applied on a consistent basis throughout the Project in accordance with the Building Owners and Managers Association guidelines. Said calculation of the Rentable Area for the Premises shall not be amended during the Term of this Lease.
  - o. Security Deposit (Section 7): \$ Waived.
  - p. State: The State of New Mexico.
  - q. Tenant's First Adjustment Date (Section 5.2): The first day of the calendar month following the Commencement Date plus twelve (12) months.
  - r. Tenant's Proportionate Share: 3.76 % Such share is a fraction, the numerator of which is the Rentable Area of the Premises, and the denominator of which is the Rentable Area of the Project, as determined by Landlord from time to time. The Project consists of one building containing a total Rentable Area of approximately 74,643 square feet.
  - s. Tenant's Use Clause (Article 8): general office use with technical support capabilities and other lawful purposes.
  - t. Term: The period commencing on the Commencement Date and expiring at midnight on the Expiration Date.
3. **EXHIBITS AND ADDENDA.** The exhibits and addenda listed below (unless lined out) are incorporated by reference in this Lease:
- a. *Exhibit A*: FLOOR PLAN showing the Premises.
  - b. *Exhibit B*: SITE PLAN of Project.
  - c. *Exhibit C*: BUILDING STANDARD WORK LETTER.
  - d. *Exhibit D*: RULES AND REGULATIONS.
  - e. *Exhibit E*: GUARANTY.
  - f. Addendum F: ADDENDUM TO OFFICE BUILDING LEASE.

4. **DELIVERY OF POSSESSION.** If for any reason Landlord does not deliver possession of the Premises to Tenant on the Commencement Date, Landlord shall not be subject to any liability for such failure, the Expiration Date shall not change and the validity of this Lease shall not be impaired, but Rent shall be abated until delivery of possession. "Delivery of possession" shall be deemed to occur on the date Landlord completes Landlord's Work as defined in *Exhibit C*. If Landlord permits Tenant to enter into possession of the Premises before the Commencement Date, such possession shall be subject to the provisions of this Lease, including, without limitation, the payment of Rent, unless otherwise specified in paragraph 2d hereof. Notwithstanding anything contained herein to the contrary, if Delivery of possession occurs later than December 31, 2015, Tenant shall receive one day rental abatement for every day of delay in Delivery, without an extension of the Term.

## 5. RENT.

5.1 Payment of Base Rent. Tenant agrees to pay the Base Rent for the Premises. Except as expressly provided otherwise to the contrary, monthly installments of Base Rent shall be payable in advance on the first day of each calendar month of the Term. If the Term begins (or ends) on other than the first (or last) day of a calendar month, the Base Rent for the partial month shall be prorated on a per diem basis. Tenant shall pay Landlord the first



Monthly Installment of Base Rent plus any prorated portion for any partial month within five (5) business days of Tenant's execution of this Lease.

### 5.2 Adjusted Base Rent.

a. The Base Rent (and the corresponding Monthly Installments of Base Rent) set forth at Section 2a shall be in accordance with Addendum F. The Base Rent as so adjusted from time to time shall be the "Base Rent" for all purposes under this Lease.

### 5.3 Project Operating Costs.

a. In order that the Rent payable during the Term reflects any increase in Project Operating Costs, Tenant agrees to pay to Landlord as Rent, Tenant's Proportionate Share of all increases in costs, expenses and obligations attributable to the Project and its operation, all as provided below.

b. If, during any calendar year during the Term, Project Operating Costs exceed the Project Operating Costs for the Base Year, Tenant shall pay to Landlord, in addition to the Base Rent and all other payments due under this Lease, an amount equal to Tenant's Proportionate Share of such excess Project Operating Costs in accordance with the provisions of this Section 5.3b.

The term "Project Operating Costs" shall include all those items described in the following subparagraphs (i) and (ii).

(i) All taxes, assessments, water and sewer charges and other similar governmental charges levied on or attributable to the Building or Project or their operation, including without limitation: (i) real property taxes or assessments levied or assessed against the Building or Project; (ii) assessments or charges levied or assessed against the Building or Project by any redevelopment agency; (iii) any tax measured by gross rentals received from the leasing of the Premises, Building or Project, excluding any net income, franchise, capital stock, estate or inheritance taxes imposed by the State or federal government or their agencies, branches or departments; provided that if at any time during the Term any governmental entity levies, assesses or imposes on Landlord any: 1) general or special, ad valorem or specific, excise, capital levy or other tax, assessment, levy or charge directly on the Rent received under this Lease or on the rent received under any other leases of space in the Building or Project; or 2) any license fee, excise or franchise tax, assessment, levy or charge measured by or based, in whole or in part, upon such rent; or 3) any transfer, transaction, or similar tax, assessment, levy or charge based directly or indirectly upon the transaction represented by this Lease or such other leases; or 4) any occupancy, use, per capita or other tax, assessment, levy or charge based directly or indirectly upon the use or occupancy of the Premises or other premises within the Building or Project, then any such taxes, assessments, levies and charges shall be deemed to be included in the term Project Operating Costs. If at any time during the Term the assessed valuation of, or taxes on, the Project are not based on a completed Project having at least ninety-five percent (95%) of the Rentable Area occupied, then the "taxes" component of Project Operating Costs shall be adjusted by Landlord to reasonably approximate the taxes which would have been payable if the Project were completed and at least ninety-five percent (95%) occupied.

(ii) Operating costs incurred by Landlord in maintaining and operating the Building and Project, including without limitation the following: costs of 1) utilities; 2) supplies; 3) insurance (including public liability, property damage, earthquake, and fire and extended coverage insurance for the full replacement cost of the Building and Project as required by Landlord or its lenders for the Project; 4) services of independent contractors; (5) compensation (including employment taxes and fringe benefits) of all persons who perform duties connected

with the operation, maintenance, repair or overhaul of the Building or Project, and equipment, improvements and facilities located within the Project, including without limitation engineers, janitors, painters, floor waxers, window washers, security and parking personnel and gardeners (but excluding persons performing services not uniformly available to or performed for substantially all Building or Project tenants); 6) operation and maintenance of a room for delivery and distribution of mail to tenants of the Building or Project as required by the U.S. Postal Service (including, without limitation, an amount equal to the fair market rental value of the mail room premises); 7) management of the Building or Project, whether managed by Landlord or an independent contractor (including, without limitation, an amount equal to the fair market value of any on-site manager's office.); 8) rental expenses for (or a reasonable depreciation allowance on) personal property used in the maintenance, operation or repair of the Building or Project; 9) costs, expenditures or charges (whether capitalized or not) required by any governmental or quasi-governmental authority; (10) amortization of capital expenses (including financing costs) a) required by a governmental entity for energy conservation or life safety purposes; or b) made by Landlord to reduce Project Operating Costs; and 11) any other costs or expenses incurred by Landlord under this Lease and not otherwise reimbursed by tenants of the Project. If at any time during the Term, less than ninety-five percent (95%) of the Rentable Area of the Project is occupied, the "operating costs" component of Project Operating Costs shall be adjusted by Landlord to reasonably approximate the operating costs which would have been incurred if the Project had been at least ninety-five percent (95%) occupied.

Tenant's Proportionate Share of Project Operating Costs shall be payable by Tenant to Landlord as follows:

(iii) Beginning with the calendar year following the Base Year and for each calendar year thereafter ("Comparison Year"), Tenant shall pay Landlord an amount equal to Tenant's Proportionate Share of the Project Operating Costs incurred by Landlord in the Comparison Year which exceeds the total amount of Project Operating Costs payable by Landlord for the Base Year. This excess is referred to as the "Excess Expenses."

(iv) To provide for current payments of Excess Expenses, Tenant shall, at Landlord's request, pay as additional rent during each Comparison Year, an amount equal to Tenant's Proportionate Share of the Excess Expenses payable during such Comparison Year, as estimated by Landlord from time to time. Such payments shall be made in monthly installments, commencing on the first day of the month following the month in which Landlord notifies tenant of the amount it is to pay hereunder and continuing until the first day of the month following the month in which Landlord gives Tenant a new notice of estimated Excess Expenses. It is the intention hereunder to estimate from time to time the amount of the Excess Expenses for each Comparison Year and Tenant's Proportionate Share thereof, and then to make an adjustment in the following year based on the actual Excess Expenses incurred for that Comparison Year. Operating Costs shall be limited to those building standard costs recognized as operating expenses for the Project in accordance with generally accepted accounting principles consistently applied.

(v) On or before April 1 of each Comparison Year after the first Comparison Year (or as soon thereafter as is practical), Landlord shall deliver to Tenant a detailed line item statement, consistent in format, setting forth Tenant's Proportionate Share of the Excess Expenses for the preceding Comparison Year. If Tenant's Proportionate Share of the actual Excess Expenses for the previous Comparison Year exceeds the total of the estimated monthly payments made by Tenant for such year, Tenant shall pay Landlord the amount of the deficiency within ten (10) business days of the receipt of the statement. If such total exceeds Tenant's Proportionate Share of the actual Excess Expenses for such Comparison Year, then Landlord shall credit against Tenant's next ensuing monthly installment(s) of additional rent an amount equal to the difference until the credit is

exhausted. If a credit is due from Landlord on the Expiration Date, Landlord shall pay Tenant the amount of the credit within ten (10) business days. The obligations of Tenant and Landlord to make payments required under this Section 5.3 shall survive the Expiration Date.

(vi) Tenant's Proportionate Share of Excess Expenses in any Comparison Year having less than 365 days shall be appropriately prorated.

(vii) If any dispute arises as to the amount of any additional rent due hereunder, Tenant or its accountants shall have the right at Tenant's expense to inspect and copy Landlord's books and records with regard to the Operating Expenses charged to Tenant to verify the amounts. If there is a dispute with regard to those Operating Expenses charged to Tenant which cannot be resolved by Landlord and Tenant, an independent accounting firm mutually selected by Landlord and Tenant will determine whether the disputed Operating Expense or Operating Expenses is properly a part of the Tenant Operating Expense and/or the accuracy of the amount thereof. Such determination shall be final as to both Landlord and Tenant. Any resulting adjustments shall be taken into consideration in determining the amount to be charged to Tenant the following year. Tenant agrees to pay the cost of such certification unless it is determined that Landlord's original statement overstated Project Operating Costs by more than five percent (5%).

(viii) If this Lease sets forth an Expense Stop at Section 2f, then during the Term Tenant shall be liable for Tenant's Proportionate Share of any actual Project Operating Costs which exceed the amount of the Expense Stop. Tenant shall make current payments of such excess costs during the Term in the same manner as is provided for payment of Excess Expenses under the applicable provisions of Section 5.3b(2)(b) and (c) above.

5.4 Definition of Rent. All costs and expenses which Tenant assumes or agrees to pay to Landlord under this Lease shall be deemed additional rent (which, together with the Base Rent is sometimes referred to as the "Rent." The Rent shall be paid to the Building manager (or other person) and at such place, as Landlord may from time to time designate in writing, without any prior demand therefore and without deduction or offset, in lawful money of the United States of America.

5.5 Rent Control. If the amount of Rent or any other payment due under this Lease violates the terms of any governmental restrictions on such Rent or payment, then the Rent or payment due during the period of such restrictions shall be the maximum amount allowable under those restrictions.

5.6 Taxes Payable by Tenant. In addition to the Rent and any other charges to be paid by Tenant hereunder, Tenant shall reimburse Landlord upon demand for any and all taxes payable by Landlord (other than net income taxes) which are not otherwise reimbursable under this Lease, whether or not now customary or within the contemplation of the parties, where such taxes are upon, measured by or reasonably attributable to (a) the cost or value of Tenant's equipment, furniture, fixtures and other personal property located in the Premises, or the cost or value of any leasehold improvements made in or to the Premises by or for Tenant, other than Building Standard Work made by Landlord, regardless of whether title to such improvements is held by Tenant or Landlord; (b) the gross or net Rent payable under this Lease, including, without limitation, any rental or gross receipts tax levied by any taxing authority with respect to the receipt of the Rent hereunder; (c) the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of the Premises or any portion thereof; or (d) this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises If it becomes unlawful for Tenant to reimburse Landlord for any costs as required under this Lease,

the Base Rent shall be revised to net Landlord the same net Rent after imposition of any tax or other charge upon Landlord as would have been payable to Landlord but for the reimbursement being unlawful.

## **6. INTEREST AND LATE CHARGES.**

If Tenant fails to pay when due any Rent or other amounts or charges which Tenant is obligated to pay under the terms of this Lease, the unpaid amounts shall bear interest at the prime rate as published in The Wall Street Journal plus three (3) per cent per annum. Tenant acknowledges that the late payment of any Monthly Installment of Base Rent will cause Landlord to lose the use of that money and incur costs and expenses not contemplated under this Lease, including without limitation, administrative and collection costs and processing and accounting expenses, the exact amount of which is extremely difficult to ascertain. Therefore, in addition to interest, if any such installment is not received by Landlord within ten (10) days from the date it is due, Tenant shall pay Landlord a late charge equal to five percent (5%) of such installment. Landlord and Tenant agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to Landlord for the loss suffered from such nonpayment by Tenant. Acceptance of any interest or late charge shall not constitute a waiver of Tenant's default with respect to such nonpayment by Tenant nor prevent Landlord from exercising any other rights or remedies available to Landlord under this Lease. Notwithstanding anything contained herein to the contrary, Tenant shall not have to pay late charges for the first late Rent payment for each calendar year.

## **7. SECURITY DEPOSIT.**

Intentionally deleted.

## **8. TENANTS USE OF THE PREMISES.**

Tenant shall use the Premises solely for the purposes set forth in Tenant's Use Clause. Tenant shall not knowingly use or occupy the Premises in violation of law or any covenant, condition or restriction affecting the Building or Project or the certificate of occupancy issued for the Building or Project, and shall, upon notice from Landlord, immediately discontinue any use of the Premises which is declared by any governmental authority having jurisdiction to be a violation of law or the certificate of occupancy. Tenant, at Tenant's own cost and expense, shall comply with all laws, ordinances, regulations, rules and/or any directions of any governmental agencies or authorities having jurisdiction which shall, by reason of the nature of Tenant's sole use or occupancy of the Premises, impose any duty upon Tenant or Landlord with respect to the Premises or its use or occupation. A judgment of any court of competent jurisdiction or the admission by Tenant in any action or proceeding against Tenant that Tenant has violated any such laws, ordinances, regulations, rules and/or directions in the use of the Premises shall be deemed to be a conclusive determination of that fact as between Landlord and Tenant. Tenant shall not willfully do or permit to be done anything which will invalidate or increase the cost of any fire, extended coverage or other insurance policy covering the Building or Project and/or property located therein, and shall comply with all rules, orders, regulations, requirements and recommendations of the Insurance Services Office or any other organization performing a similar function. Tenant shall promptly upon demand reimburse Landlord for any additional premium charged for such policy by reason of Tenant's failure to comply with the provisions of this Article. Tenant shall not willfully do or permit anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the Building or Project, or injure or annoy them, or use or allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose as determined by Landlord at its discretion, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or suffer to be committed any waste in or upon the Premises.

## **9. SERVICES AND UTILITIES.**

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

Tenant shall not, without the written consent of Landlord, use any apparatus or device in the Premises, including without limitation, electronic data processing machines, punch card machines or machines using in excess of 120 volts, which consumes more electricity than is usually furnished or supplied for the use of premises as general office space, as determined by Landlord. Tenant shall not connect any apparatus with electric current except through existing electrical outlets in the Premises. Tenant shall not consume water or electric current in excess of that usually furnished or supplied for the use of premises as general office space as determined by Landlord, without first procuring the written consent of Landlord, which Landlord may refuse, and in the event of consent, Landlord may have installed a water meter or electrical current meter in the Premises to measure the amount of water or electric current consumed. The cost of any such meter and of its installation, maintenance and repair shall be paid for by the Tenant and Tenant agrees to pay to Landlord promptly upon demand for all such water and electric current consumed as shown by said meters, at the rates charged for such services by the local public utility.

Nothing contained in this Article shall restrict Landlord's right to require at any time separate metering of utilities furnished to the Premises. In the event utilities are separately metered, Tenant shall pay promptly upon demand for all utilities consumed at utility rates charged by the local public utility. Tenant shall be responsible for the maintenance and repair of any such meters at its sole cost.

Landlord shall furnish elevator service, lighting replacement for building standard light, public restrooms, hot and cold water, restroom supplies, window washing, and janitor services in a manner that such services are customarily furnished to comparable office Class "B" buildings in the area.

## **10. CONDITION OF THE PREMISES.**

Tenant's taking possession of the Premises shall be deemed conclusive evidence that as of the date of taking possession the Premises are in good order and satisfactory condition, except for such matters as to which Tenant

gave Landlord notice on or before the Commencement Date. No promise of Landlord to alter, remodel, repair or improve the Premises, the Building or the Project and no representation, express or implied, respecting any matter or thing relating to the Premises, Building, Project or this Lease (including, without limitation, the condition of the Premises, the Building or the Project) have been made to Tenant by Landlord or its Broker or Sales Agent, other than as may be contained herein or in a separate exhibit or addendum signed by Landlord and Tenant.

As soon as practicable after Tenant takes possession of the Premises, representatives of Landlord and Tenant will jointly inspect the Premises and will prepare and sign a list ("Punch List") of any defects in the Leasehold Improvement. Despite the provisions set forth in Section 10 to the contrary, Landlord will (i) promptly complete or repair all Punch List items, and (ii) during the Term of the Lease, will cure any latent defects in the Premises within a reasonable time after Tenant provides notice to Landlord of any such defects.

## **11. CONSTRUCTION, REPAIRS AND MAINTENANCE.**

a. Landlord's Obligations. Landlord shall perform Landlord's Work to the Premises as described in Exhibit "C" Landlord shall maintain in good order, condition and repair the Building and all other portions of the Premises not the obligation of Tenant or of any other tenant in the Building.

b. Tenant's Obligations.

(i) Tenant shall perform Tenant's Work to the Premises as described in Exhibit "C"

(ii) Tenant at Tenant's sole expense shall, except for services furnished by Landlord pursuant to section 9 hereof, maintain the Premises in good order, condition and repair, including the interior surfaces of the ceilings, walls and floors, all doors, all interior windows, all plumbing, fixtures, Tenant cabling, electrical wiring, switches and fixtures, Building Standard furnishings and special items and equipment installed by or at the expense of Tenant.

(iii) Tenant shall be responsible for all repairs and alterations in and to the Premises, Building and Project and the facilities and systems thereof, the need for which arises out of (1) Tenant's use or occupancy of the Premises, (2) the installation, removal, use or operation of Tenant's Property (as defined in Article 13) in the Premises, (3) the moving of Tenant's Property into or out of the Building, or (4) the sole and intentional act, omission, misuse or negligence of Tenant, its agents, contractors, employees or invitees.

(iv) If Tenant fails to maintain the Premises In good order, condition and repair, Landlord shall give Tenant notice to do such acts as are reasonably required to so maintain the Premises. If Tenant fails to promptly commence such work and diligently prosecute it to completion, then Landlord shall have the right to do such acts and expend such funds at the expense of Tenant as are reasonably required to perform such work. Any amount so expended by Landlord shall be paid by Tenant as soon as practicable after demand with interest at the prime commercial rate then being charged by Bank of America NT & SA plus two percent (2%) per annum, from the date of such work, but not to exceed the maximum rate then allowed by State and Federal law. Landlord shall have no liability to Tenant for any damage, inconvenience, or interference with the use of the Premises by Tenant as a result of performing any such work.

c. Compliance with Law. Landlord and tenant shall each do all acts required to comply with all applicable laws, ordinances, and rules of any public authority relating to their respective maintenance obligations as set forth herein.

d. Waiver by Tenant. Except as otherwise provided in this Lease, Tenant expressly waives the benefits of any statute now or hereafter in effect which would otherwise afford the Tenant the right to make repairs at Landlord's expense or to terminate this Lease because of Landlord's failure to keep the Premises in good order, condition and repair.

e. Load and Equipment Limits. Tenant shall not place a load upon any floor of the Premises which exceeds the load per square foot which such floor was designed to carry, as determined by Landlord or Landlord's structural engineer. The cost of any such determination made by Landlord's structural engineer shall be paid for by Tenant upon demand. Tenant shall not install business machines or mechanical equipment which continuously cause excessive noise or vibration to such a degree as to adversely impact other Building tenants.

f. Liability for Repairs. Except as otherwise expressly provided in this Lease, Landlord shall have no liability to Tenant nor shall Tenant's obligations under this Lease be reduced or abated in any manner whatsoever by reason of any inconvenience, annoyance, interruption or injury to business arising from Landlord's making any repairs or changes which Landlord is required or permitted by this Lease or by any other tenant's lease or required by law to make in or to any portion of the Project, Building or the Premises unless caused by Landlord's gross negligence or wrongful misconduct. Landlord shall nevertheless use reasonable efforts to minimize any interference with Tenant's business in the Premises.

g. Notice of Defects. Tenant shall give Landlord notice, as soon as practicable, of any damage to or defective condition in any part or appurtenance of the Building's mechanical, electrical, plumbing, HVAC or other systems serving, located in, or passing through the Premises.

h. Return of Premises. Upon the expiration or earlier termination of this Lease, Tenant shall return the Premises to Landlord clean and in the same condition as on the date Tenant took possession, excepting normal wear and tear, condemnation and casualty, other than required to be insured against by Tenant hereunder. Any damage to the Premises, including any structural damage, resulting from Tenant's sole use or from the direct removal of Tenant's fixtures, furnishings and equipment pursuant to Section 13b shall be repaired by Tenant at Tenant's expense.

## **12. ALTERATIONS AND ADDITIONS.**

a. Tenant shall not make any additions, alterations or improvements to the Premises without obtaining the prior written consent of Landlord, which shall not be unreasonably withheld or delayed. Landlord's consent may be conditioned on Tenant's removing any such additions, alterations or improvements upon the expiration of the Term and restoring the Premises to the same condition as on the date Tenant took possession. All work with respect to any addition, alteration or improvement shall be done in a good and workmanlike manner by properly qualified and licensed personnel approved by Landlord, and such work shall be diligently prosecuted to completion. Tenant shall not require Landlord's consent for alterations that do not exceed \$10,000 per calendar year (i.e. paint and carpet). Landlord may, at Landlord's option, require that any such work be performed by Landlord's contractor, in which case the cost of such work shall be paid for before commencement of the work. Tenant shall pay to Landlord upon completion of any such work by Landlord's contractor, an administrative fee of four percent (4%) of the cost of the work. The foregoing fee shall not apply to Landlord's work.

b. Tenant shall pay the costs of any work done on the Premises pursuant to Section 12a, and shall keep the Premises, Building and Project free and clear of liens of any kind. Tenant shall indemnify, defend against and keep Landlord free and harmless from all liability, loss, damage, costs, attorneys' fees and any other expense incurred on account of claims by any person performing work or furnishing materials or supplies for Tenant or any person claiming under Tenant.

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

c. Unless their removal is required by Landlord as provided in Section 12a, all additions, alterations and improvements made to the Premises shall become the property of Landlord and be surrendered with the Premises upon the expiration of the Term; provided, however, Tenant's equipment, machinery and trade fixtures which can be removed without damage to the Premises shall remain the property of Tenant and may be removed, subject to the provisions of Section 13b.

Effective with the Commencement Date, Landlord, with respect to the Common Areas, and Tenant, with respect to the Premises, each covenant and agree to complete any and all alterations, modifications or improvements, including, but not limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangements in structure, and changes or rearrangements in wall configuration or full-height partitions which are or become necessary, in order to comply with all Public Accommodation Laws, unless such improvements or modifications are the legal responsibility of Landlord, Tenant or a third party.

Landlord and Tenant covenant and agree to use their reasonable efforts to insure that any and all alterations, modifications or improvements undertaken pursuant hereto are accomplished in a manner which will not substantially interfere with the others' use or possession of space in the Building. In the event modifications or improvements undertaken by Landlord pursuant hereto substantially interfere with Tenant's use or possession of the Premises or any portion thereof, rent shall abate in the proportion that the unusable area of the Premises bears to the entire area of the Premises.

Landlord agrees to permit Tenant, at Tenant's cost, to make any improvements or modifications to the Premises which are required by Public Accommodation Laws, and to approve such improvements or modifications, provided that all such improvements or modifications are made in compliance with applicable Public Accommodation Laws.

For the purposes of this Lease, "Public Accommodation Laws" shall mean all applicable federal, state and local laws, regulations, and building codes, in effect during the term of this Lease, governing non-discrimination in employment, public accommodations and commercial facilities, including without limitation, the requirements of the Americans with Disabilities Act 42 USC 12101.

### **13. LEASEHOLD IMPROVEMENTS; TENANTS PROPERTY.**



a. All fixtures, equipment, improvements and appurtenances attached to or built into the Premises at the commencement of or during the Term, whether or not by or at the expense of Tenant ("Leasehold Improvements"), shall be and remain a part of the Premises, shall be the property of Landlord and shall not be removed by Tenant, except as expressly provided in Section 13b.

b. All movable partitions, business and trade fixtures, machinery and equipment, communications equipment and office equipment located in the Premises and acquired by or for the account of Tenant, without expense to Landlord, which can be removed without structural damage to the Building, and all furniture, furnishings and other articles of movable personal property owned by Tenant and located in the Premises (collectively "Tenant's Property") shall be and shall remain the property of Tenant and may be removed by Tenant at any time during the Term; provided that if any of Tenant's Property is removed, Tenant shall promptly repair any damage to the Premises or to the Building resulting from such removal.

#### **14. RULES AND REGULATIONS.**

Tenant agrees to comply with (and shall endeavor to cause its agents, contractors, employees and invitees to comply with) the rules and regulations attached hereto as Exhibit "D" and with such reasonable modifications thereof, applied uniformly to Tenants of the Building, and additions thereto as Landlord may from time to time make. Landlord shall not be responsible for any violation of said rules and regulations by other tenants or occupants of the Building or Project.

#### **15. CERTAIN RIGHTS RESERVED BY LANDLORD.**

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

a. To name the Building and Project and to change the name or street address of the Building or Project;

b. To install and maintain all signs on the exterior and interior of the Building and Project;

c. To have pass keys to the Premises and all doors within the Premises, excluding Tenant's vaults and safes;

d. At any time during the Term, and on reasonable prior notice to Tenant, to inspect the Premises, and to show the Premises to any prospective purchaser or mortgagee of the Project, or to any assignee of any mortgage on the Project, or to others having an interest in the Project or Landlord, and during the last six months of the Term, to show the Premises to prospective tenants thereof; and

e. To enter the Premises for the purpose of making inspections, repairs, alterations, additions or improvements to the Premises or the Building (including, without limitation, checking, calibrating, adjusting or balancing controls and other parts of the HVAC system), and to take all steps as may be necessary or desirable for the safety, protection, maintenance or preservation of the Premises or the Building or Landlord's interest therein, or as may be necessary or desirable for the operation or improvement of the Building or in order to comply with laws, orders or requirements of governmental or other authority. Landlord agrees to use

its best efforts (except in an emergency) to minimize interference with Tenant's business in the Premises in the course of any such entry.

## 16. ASSIGNMENT AND SUBLETTING.

No assignment of this Lease or sublease of all or any part of the Premises shall be permitted, except as provided in this Article 16.

a. Tenant shall not, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, delayed, or conditioned, assign or hypothecate this Lease or any interest herein or sublet the Premises or any part thereof, or permit the use of the Premises by any party other than Tenant. Any of the foregoing acts without such consent shall be void and shall, at the option of Landlord, terminate this Lease. This Lease shall not, nor shall any interest of Tenant herein, be assignable by operation of law without the written consent of Landlord.

b. If at any time or from time to time during the Term, Tenant desires to assign this Lease or sublet all or any part of the Premises, Tenant shall give notice to Landlord setting forth the terms and provisions of the proposed assignment or sublease, and the identity of the proposed assignee or subtenant. Tenant shall promptly supply Landlord with such information concerning the business background and financial condition of such proposed assignee or subtenant as Landlord may reasonably request. Landlord shall have the option, exercisable by notice given to Tenant within ten (10) days after Tenant's notice is given, either to sublet such space from Tenant at the rental and on the other terms set forth in this Lease for the term set forth in Tenant's notice, or, in the case of an assignment, to terminate this Lease. If Landlord does not exercise such option, or does not respond within the ten (10) day period, Tenant may assign the Lease or sublet such space to such proposed assignee or subtenant on the following further conditions:

(i) Landlord shall have the right to approve such proposed assignee or subtenant, which approval shall not be unreasonably withheld;

(ii) The assignment or sublease shall be on the same terms set forth in the notice given to Landlord;

(iii) No assignment or sublease shall be valid and no assignee or sub lessee shall take possession of the Premises until and executed counterpart of such assignment or sublease has been delivered to Landlord;

(iv) No assignee or sublease shall have a further right to assign or sublet except on the terms herein contained; and

v) Any sums or other economic consideration received by Tenant as a result of such assignment or subletting, however denominated under the assignment or sublease, which exceed, in the aggregate, (i) the total sums which Tenant is obligated to pay Landlord under this Lease (prorated to reflect obligations allocable to any portion of the Premises subleased) shall be split 50/50 with Landlord, plus

c. Notwithstanding the provisions of paragraphs a. and b. above, Tenant may assign this Lease or sublet the Premises or any portion thereof, without Landlord's consent and without extending any recapture or

termination option to Landlord, to any corporation which controls, is controlled by or is under common control with Tenant.

d. No subletting or assignment shall release Tenant of Tenant's obligations under this Lease or alter the primary liability of Tenant to pay the Rent and to perform all other obligation to be performed by Tenant hereunder. The acceptance of Rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting. In the event of default by an assignee or subtenant of Tenant or any successor of Tenant in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such assignee, subtenant or successor. Landlord may consent to subsequent assignments of the lease or sub lettings or amendments or modifications to the Lease with assignees of Tenant.

e. If Tenant assigns the Lease or sublets the Premises or requests the consent of Landlord to any assignment or subletting or if Tenant requests the consent of Landlord for any act that Tenant proposes to do, then Tenant shall, upon demand, pay Landlord an administrative fee of One Hundred and No/100ths Dollars (\$ 100.00) plus any attorneys' fees reasonably incurred by Landlord in connection with such act or request.

## **17. HOLDING OVER.**

If after expiration of the Term, Tenant remains in possession of the Premises with Landlord's permission (express or implied), Tenant shall become a tenant from month to month only, upon all the provisions of this Lease (except as to term and Base Rent), but the "Monthly Installments of Base Rent" payable by Tenant shall be increased to one hundred twenty-five percent (125%) of the Monthly Installments of Base Rent payable by Tenant at the expiration of the Term. Such monthly rent shall be payable in advance on or before the first day of each month. If either party desires to terminate such month to month tenancy, it shall give the other party not less than thirty (30) days advance written notice of the date of termination.

## **18. SURRENDER OF PREMISES.**

a. Tenant shall peaceably surrender the Premises to Landlord on the Expiration Date, in broom-clean condition and in as good condition as when Tenant took possession, except for (i) reasonable wear and tear, (ii) loss by fire or other casualty, and (iii) loss by condemnation. Tenant shall, on Landlord's request, remove Tenant's Property on or before the Expiration Date and promptly repair all damage to the Premises or Building caused by such removal.

b. If Tenant abandons or surrenders the Premises, or is dispossessed by process of law or otherwise, any of Tenant's Property left on the Premises shall be deemed to be abandoned, and, at Landlord's option, title shall pass to Landlord under this Lease as by a bill of sale. If Landlord elects to remove all or any part of such Tenant's Property, the cost of removal, including repairing any damage to the Premises or Building caused by such removal, shall be paid by Tenant. On the Expiration Date Tenant shall surrender all keys to the Premises.

Landlord may store or dispose of Tenant's property in such manner as Landlord deems appropriate without notice to and without liability whatsoever to Tenant, or to any lien holders or lessors having an interest in same, and Tenant hereby indemnifies landlord against any and all claims, losses, damages, costs and expenses of any kind or nature arising out of Landlord's removal of and/or disposition of such. Notwithstanding the foregoing, however, Landlord will use its best efforts to provide Tenant with forty-eight (48) hours notice prior to disposing of any

such property. Disposition of any property may be public or private sale in the same manner as provided for foreclosure of a landlords liens. After paying all expenses of the sale and any rent or damages due, any balance shall be payable to tenant.

## **19. DESTRUCTION OR DAMAGE.**

a. If the Premises or the portion of the Building necessary for Tenant's occupancy is damaged by fire, earthquake, act of God, the elements of other casualty,-Landlord shall, subject to the provisions of this Article, promptly repair the damage, if such repairs can, in Landlord's opinion, be completed within (90) ninety days. If Landlord determines that repairs can be completed within ninety (90) days, this Lease shall remain in full force and effect, except that if such damage is not the result of the negligence or willful misconduct of Tenant or Tenant's agents, employees, contractors, licensees or invitees, the Base Rent shall be abated to the extent Tenant's use of the Premises is impaired, commencing with the date of damage and continuing until completion of the repairs required of Landlord under Section 19d.

b. If in Landlord's opinion, such repairs to the premises or portion of the Building necessary for Tenant's occupancy cannot be completed within ninety (90) days, Landlord may elect, upon notice to Tenant given within thirty (30) days after the date of such fire or other casualty, to repair such damage, in which event this lease shall continue in full force and effect, but the Base Rent shall be partially abated as provided in Section 19a. If Landlord does not so elect to make such repairs this Lease shall terminate as of the date of such fire or other casualty.

c. If any other portion of the Building or Project is totally destroyed or damaged to the extent that in Landlord's opinion repair thereof cannot be completed within ninety (90) days, Landlord may elect upon notice to Tenant given within thirty (30) days after the date of such fire or other casualty, to repair such damage, in which event this Lease shall continue in full force and effect, but the Base Rent shall be partially abated as provided in Section 19a. If Landlord does not elect to make such repairs, this Lease shall terminate as of the date of such fire or other casualty.

d. If the Premises are to be repaired under this Article, Landlord shall repair at its cost any injury or damage to the Building and in accordance with the Approved SOW and Approved Drawings (hereinafter defined) in the Premises. Tenant shall be responsible at its sole cost and expense for the repair, restoration and replacement of any other Leasehold Improvements and Tenant's Property. Landlord shall not be liable for any loss of business inconvenience or annoyance arising from any repair or restoration of any portion of the Premises, Building or Project as a result of any damage from fire or other casualty.

e. This Lease shall be considered an express agreement governing any case of damage to or destruction of the Premises, Building or Project by fire or other casualty, and any present or future law which purports to govern the rights of Landlord and Tenant in such circumstances in the absence of express agreement, shall have no application.

## **20. EMINENT DOMAIN.**

a. If the whole of the Building or Premises is lawfully taken by condemnation or in any other manner for any public or quasi-public purpose, this Lease shall terminate as of the date of such taking, and Rent shall be prorated to such date. If less than the whole of the Building or Premises is so taken, this Lease shall be unaffected by such taking, provided that (i) Tenant shall have the right to terminate this Lease by notice to Landlord given

within ninety (90) days after the date of such taking if twenty percent (20%) or more of the Premises is taken and the remaining area of the Premises is not reasonably sufficient for Tenant to continue operation of its business, and (ii) Landlord shall have the right to terminate this Lease by notice to Tenant given within ninety (90) days after the date of such taking. If either Landlord or Tenant so elects to terminate this Lease, the Lease shall terminate on the thirtieth (30th) day after either such notice. The Rent shall be prorated to the date of termination. If this Lease continues in force upon such partial taking, the Base Rent and Tenant's Proportionate Share shall be equitably adjusted according to the remaining Rentable Area of the Premises and Project.

b. In the event of any taking, partial or whole, all of the proceeds of any award, judgment or settlement payable by the condemning authority shall be the exclusive property of Landlord, and Tenant hereby assigns to Landlord all of its right, title and interest in any award, judgment or settlement from the condemning authority. Tenant, however, shall have the right, to the extent that Landlord's award is not reduced or prejudiced, to claim from the condemning authority (but not from Landlord) such compensation as may be recoverable by Tenant in its own right for relocation expenses and damage to Tenant's personal property.

c. In the event of a partial taking of the Premises which does not result in a termination of this Lease, Landlord shall restore the remaining portion of the Premises as nearly as practicable to its condition prior to the condemnation or taking, but only to the extent of the Approved SOW and Approved Drawings. Tenant shall be responsible at its sole cost and expense for the repair, restoration and replacement of any other Leasehold Improvements and Tenant's Property.

## **21. INDEMNIFICATION.**

Neither party shall be liable to the other party, or to the other party's agents, servants, employees, customers or invitees for any damage to person or property of the other party or any third party, unless caused by the grossly negligent acts or omissions of such party, its agents, servants or employees, and in such case the grossly negligent party agrees to indemnify and hold the other party harmless from all liability and claims for any such damage. In the event any provision of this Lease is found by a court of law or equity to be unlawful, invalid or unenforceable, in that event said provision will be revised, ipso facto, to comport with the current law so as to allow both parties to enforce said provision to the fullest extent of the law and the remainder of the Lease shall remain valid as originally stated.

## **22. TENANT'S INSURANCE.**

a. All insurance required to be carried by Tenant hereunder shall be issued by responsible insurance companies acceptable to Landlord and Landlord's lender and qualified to do business in the State. Each policy shall name Landlord, and at Landlord's request any mortgagee of Landlord, as an additional insured, as their respective interests may appear. Each policy shall contain (i) a cross-liability endorsement, (ii) a provision that such policy and the coverage evidenced thereby shall be primary and non-contributing with respect to any policies carried by Landlord and that any coverage carried by Landlord shall be excess insurance, and (iii) a waiver by the insurer of any right of subrogation against Landlord, its agents, employees and representatives, which arises or might arise by reason of any payment under such policy or by reason of any act or omission of Landlord, its agents, employees or representatives. A copy of each paid up policy (authenticated by the insurer) or certificate of the insurer evidencing the existence and amount of each insurance policy required hereunder shall be delivered to Landlord before the date Tenant is first given the right of possession of the Premises, and thereafter within thirty

(30) days after any demand by Landlord therefore. Landlord may, at any time and from time to time, inspect and/or copy any insurance policies required to be maintained by Tenant hereunder. No such policy shall be cancelable except after twenty (20) days written notice to Landlord and Landlord's lender. Tenant shall furnish Landlord with renewals or "binders" of any such policy at least ten (10) days prior to the expiration thereof. Tenant agrees that if Tenant does not take out and maintain such insurance, Landlord may (but shall not be required to) procure said insurance on Tenant's behalf and charge the Tenant the premiums together with a twenty-five percent (25%) handling charge, payable upon demand. Tenant shall have the right to provide such insurance coverage pursuant to blanket policies obtained by the Tenant, provided such blanket policies expressly afford coverage to the Premises, Landlord, Landlord's mortgagee and Tenant as required by this Lease.

b. Beginning on the date Tenant is given access to the Premises for any purpose and continuing until expiration of the Term, Tenant shall procure, pay for and maintain in effect policies of casualty insurance covering (i) all Leasehold Improvements (including any alterations, additions or improvements as may be made by Tenant pursuant to the provisions of Article 12 hereof, and (ii) trade fixtures, merchandise and other personal property from time to time in, on or about the Premises, in an amount not less than one hundred percent (100%) of their actual replacement cost from time to time, providing protection against any peril included within the classification "Fire and Extended Coverage" together with insurance against sprinkler damage, vandalism and malicious mischief. The proceeds of such insurance shall be used for the repair or replacement of the property so insured. Upon termination of this Lease following a casualty as set forth herein, the proceeds under (i) shall be paid to Landlord, and the proceeds under (ii) above shall be paid to Tenant. Notwithstanding anything contained herein to the contrary, Tenant reserves the right to self-insure its plate glass, personal property, and business interruption.

c. Beginning on the date Tenant is given access to the Premises for any purpose and continuing until expiration of the Term, Tenant shall procure, pay for and maintain in effect workers' compensation insurance as required by law and comprehensive public liability and property damage insurance with respect to the construction of improvements on the Premises, the use, operation or condition of the Premises and the operations of Tenant in, on or about the Premises, providing personal injury and broad form property damage coverage for not less than One Million Dollars (\$1,000,000.00) combined single limit for bodily injury, death and property damage liability.

### **23. WAIVER OF SUBROGATION.**

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

### **24. SUBORDINATION AND ATTORNMENT.**

Upon written request of Landlord, or any first mortgagee or first deed of trust beneficiary of Landlord, or ground lesser of Landlord, Tenant shall, in writing, subordinate its rights under this Lease to the lien of any first mortgage or first deed of trust, or to the interest of any lease in which Landlord is lessee, and to all advances made or hereafter to be made there under. The holder of any security interest may, upon written notice to Tenant, elect to

have this Lease prior to its security interest regardless of the time of the granting or recording of such security interest.

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

Tenant's obligation to subordinate its rights under this Lease or to attorn to any purchaser, transferee or lessor, as provided in Section 24 of this Lease, is contingent on and subject to Tenant receiving a written non-disturbance agreement, duly executed and delivered by the party requesting the subordination or attornment agreement from Tenant, which provides that so long as Tenant is not in default under the terms of this Lease or cures any such default within the time permitted by this Lease, then Tenant's rights of possession to the Premises will not be affected or disturbed by any such mortgagee, beneficiary or ground lessor of Landlord in exercise of its rights or remedies with respect to the Premises, and any sale or transfer of the Premises pursuant to the exercise of any such rights or remedies will be made subject to Tenant's right of possession under this Lease.

## **25. TENANT ESTOPPEL CERTIFICATES.**

Within ten (10) days after written request from Landlord, and not to occur more than two (2) times per calendar year, Tenant shall execute and deliver to Landlord or Landlord's designee, a written statement certifying (a) that this Lease is unmodified and in full force and effect, or is in full force and effect as modified and stating the modifications; (b) the amount of Base Rent and the date to which Base Rent and additional rent have been paid in advance; (c) the amount of any security deposited with Landlord; and (d) that Landlord is not in default there under or, if Landlord is claimed to be in default, stating the nature of any claimed default. Any such statement may be relied upon by a purchaser, assignee or lender. Tenant's failure to execute and deliver such statement within the time required shall at Landlord's election be a default under this Lease and shall also be conclusive upon Tenant that: (1) this Lease is in full force and effect and has not been modified except as represented by Landlord; (2) there are no uncured defaults in Landlord's performance and that Tenant has no right of offset, counter-claim or deduction against Rent; and (3) not more than one month's Rent has been paid in advance.

## **26. TRANSFER OF LANDLORD'S INTEREST.**

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

## **27. DEFAULT.**

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

- a. If Tenant abandons or vacates the Premises without the payment of Rent; or

- b. If Tenant fails to pay any Rent or any other charges required to be paid by Tenant under this Lease and such failure continues for five (5) days after such payment is due and payable; or
- c. If Tenant fails to perform any covenant, condition or agreement contained in this Lease and such failure continues for thirty (30) days after written notice thereof from Landlord to Tenant specifying such default, or if such default cannot reasonably be cured within thirty (30) days, if Tenant fails to commence to cure within that thirty (30) day period, the Tenant shall be liable to Landlord for damages sustained by Landlord as a result of Tenant's breach; or
- d. If a writ of attachment or execution is levied on this Lease or on any of Tenant's Property; or
- e. If Tenant makes a general assignment for the benefit of creditors, or provides for an arrangement, composition, extension or adjustment with its creditors; or
- f. If Tenant files a voluntary petition for relief or if a petition against Tenant in a proceeding under the federal bankruptcy laws or other insolvency laws is filed and not withdrawn or dismissed within forty-five (45) days thereafter, or if under the provisions of any law providing for reorganization or winding up of corporations, any court of competent jurisdiction assumes jurisdiction, custody or control of Tenant or any substantial part of its property and such jurisdiction, custody or control remains in force unrelinquished, unstayed or unterminated for a period of forty-five (45) days; or
- g. If in any proceeding or action in which Tenant is a party, a trustee, receiver, agent or custodian is appointed to take charge of the Premises or Tenant's Property (or has the authority to do so) for the purpose of enforcing a lien against the Premises or Tenant's Property; or
- h. If Tenant is a partnership or consists of more than one (1) person or entity, if any partner of the partnership or other person or entity is involved in any of the acts or events described in subparagraphs d. through g. above.

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

- a. Terminate this Lease and Tenant's right to possession of the Premises, declare all rent for the remainder of the term due and payable and reenter the Premises and take possession thereof, and Tenant shall have no further claim to the Premises or under this Lease; or
- b. Continue this Lease in effect, reenter and occupy the Premises for the account of Tenant, and collect any unpaid Rent or other charges which have or thereafter become due and payable; or
- c. Reenter the Premises under the provisions of subparagraph b., and thereafter elect to terminate this Lease and Tenant's right to possession of the Premises.

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



deficiency shall be calculated and paid monthly. Tenant shall also pay to Landlord, as soon as determined, any costs and expenses incurred by Landlord in connection with such reletting or in making alterations and repairs to the Premises, which are not covered by the rent received from the reletting.

Should Landlord elect to terminate this Lease under the provisions of subparagraph a or c above, Landlord may recover as damages from Tenant the following:

1. Past Rent. The worth at the time of the award of any unpaid Rent which had been earned at the time of termination; plus

2. Rent Prior to Award. The worth at the time of the award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

3. Rent After Award. The worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the rental loss that Tenant proves could be reasonably avoided; plus

4. Proximately Caused Damages. Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result there from, including, but not limited to, any costs or expenses (including attorneys' fees), incurred by Landlord in (a) retaking possession of the Premises, (b) maintaining the Premises after Tenant's default, (c) preparing the Premises for reletting to a new tenant, including any repairs or alterations, and (d) reletting the Premises, including broker's commissions.

"The worth at the time of the award" as used in subparagraphs 1 and 2 above, is to be computed by allowing interest at the rate of ten percent (10%) per annum. "The worth at the time of the award" as used in subparagraph 3 above, is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank situated nearest to the Premises at the time of the award plus one percent (1%).

The waiver by Landlord of any breach of any term, covenant or condition of this Lease shall not be deemed a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition. Acceptance of Rent by Landlord subsequent to any breach hereof shall not be deemed a waiver of any preceding breach other than the failure to pay the particular Rent so accepted, regardless of Landlord's knowledge of any breach at the time of such acceptance of Rent. Landlord shall not be deemed to have waived any term, covenant or condition unless Landlord gives Tenant written notice of such waiver.

27.3 Landlord's Default. If Landlord fails to perform any covenant, condition or agreement contained in this Lease within thirty (30) days after receipt of written notice from Tenant specifying such default, or if such default cannot reasonably be cured within thirty (30) days, if Landlord fails to commence to cure within that thirty (30) day period, then Landlord shall be liable to Tenant for any damages sustained by Tenant as a result of Landlord's breach; provided, however, it is expressly understood and agreed that if Tenant obtains a money judgment against Landlord resulting from any default or other claim arising under this Lease, that judgment shall be satisfied only out of the rents, issues, profits, and other income actually received on account of Landlord's right, title and interest in the Premises, Building or Project, and no other real, personal or mixed property of Landlord (or of any of the partners which comprise Landlord, if any) wherever situated, shall be subject to levy to satisfy such Judgment. If, after notice to Landlord of default, Landlord (or any first mortgagee or first deed of trust beneficiary of Landlord)

fails to cure the default as provided herein, then Tenant shall have the right to cure that default at Landlord's expense in accordance with Section 11 of this Lease. Tenant shall not have the right to terminate this Lease or to withhold, reduce or offset any amount against any payments of Rent or any other charges due and payable under this Lease except as otherwise specifically provided herein.

## **28. BROKERAGE FEES.**

Tenant warrants and represents that it has not dealt with any real estate broker or agent in connection with this Lease or its negotiation except those noted in Section 2.c. Tenant shall indemnify and hold Landlord harmless from any cost, expense or liability (including costs of suit and reasonable attorneys' fees) for any compensation, commission or fees claimed by any other real estate broker or agent in connection with this Lease or its negotiation by reason of any act of Tenant. Brokers shall be paid pursuant to a separate agreement. Notwithstanding anything contained herein to the contrary, if Landlord fails to pay brokers per the agreement, Tenant shall have the option to withhold Rent until such commissions are paid in full.

## **29. NOTICES.**

All notices, approvals and demands permitted or required to be given under this Lease shall be in writing and deemed duly served or given if personally delivered or sent by certified or registered U.S. mail, postage prepaid, and addressed as follows: (a) if to Landlord, to Landlord's Mailing Address and to the Building manager, and (b) if to Tenant, to Tenant's Mailing Address; provided, however, notices to Tenant shall be deemed duly served or given if delivered or mailed to Tenant at the Premises. Landlord and Tenant may from time to time by notice to the other designate another place for receipt of future notices.

## **30. GOVERNMENT ENERGY OR UTILITY CONTROLS.**

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

## **31. RELOCATION OF PREMISES. INTENTIONALLY DELETED.**

## **32. QUIET ENJOYMENT.**

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

## **33. OBSERVANCE OF LAW.**

Tenant shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated. Tenant shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force, and with the requirements of any board of fire insurance underwriters or other similar bodies now or hereafter constituted, relating to, or affecting the condition, use or occupancy of the Premises, excluding structural changes not related to or affected by Tenant's improvements or acts. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord is a party thereto or not, that Tenant has violated any law, ordinance or governmental rule, regulation or requirement, shall be conclusive of that fact as between Landlord and Tenant.

#### **34. FORCE MAJEURE.**

Any prevention, delay or stoppage of work to be performed by Landlord or Tenant which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefore, acts of God, governmental restrictions or regulations or controls, judicial orders, enemy of hostile government actions, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform hereunder, shall excuse performance of the work by that party for a reasonable period equal to the duration of that prevention, delay or stoppage. Nothing in this Article 34 shall excuse of delay Tenant's obligation to pay Rent or other charges under this Lease.

#### **35. CURING TENANT'S DEFAULTS.**

If Tenant defaults in the performance of any of its obligations under this Lease, Landlord may (but shall not be obligated to) without waiving such default, perform the same for the account at the expense of Tenant. Tenant shall pay Landlord all costs of such performance promptly upon receipt of a bill therefore.

#### **36. SIGN CONTROL.**

Landlord, at Landlord's sole cost and expense, shall provide main lobby directory signage, standard door signage, and monument signage with Tenant's trade name per Building Standards. Tenant shall not affix, paint, erect or inscribe any sign, projections, awning, signal or advertisement of any kind to any part of the Premises, Building or Project, including without limitation, the inside or outside or windows or doors, without the written consent of Landlord. Landlord shall have the right to remove any signs or other matter, installed without Landlord's permission, without being liable to Tenant by reason of such removal, and to charge the cost of removal to Tenant as additional rent hereunder, payable within ten (10) days of written demand by Landlord.

#### **37. ENVIRONMENTAL PROVISIONS:**

a. Covenants and Agreements: Tenant covenants and agrees from the date hereof and so long as this Lease shall remain in effect not to cause or permit the presence, use, generation, release, discharge, storage, disposal, or transportation of any Hazardous Materials (as hereinafter defined) on, under, in, about, to, or from the Premises, the Building or the Project, other than for normal office use and cleaning, by Tenant, Tenant's agents, representatives, employees, contractors, guests, licensees or invitees. Landlord hereby represents and warrants to the best of its knowledge that there is currently no known existence of Hazardous Materials, other than items for normal office use and cleaning, in or about the Premises.

Notwithstanding the foregoing, Tenant hereby covenants and agrees to promptly remove from the Project, the Building and/or the Premises, any Hazardous Materials discovered thereon which have been used, discharged, disposed of or stored thereon by Tenant or Tenant's agents, representatives, employees, contractors, guests, licensees or invitees, and to comply in all respects with any and all federal, state, and local governmental laws, codes, ordinances and regulations governing such removal and disposal, whether now in effect or hereafter enacted, with title to all such Hazardous Materials to remain, and be stored or disposed of, in Tenant's name.

As used herein, the term "Hazardous Materials" shall include without limitation, asbestos or any substance containing asbestos and deemed hazardous under any Hazardous Material Law (defined below), the group of organic compounds known as polychlorinated biphenyl, flammable explosives, radioactive materials, chemicals known to cause cancer or reproductive toxicity, pollutants, effluents, contaminants, emissions or related materials and any items included in the definition of hazardous or toxic waste, materials or substances under any law relating to environmental conditions and industrial hygiene, whether now in effect or hereafter enacted, including without limitation, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. § 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601-9657, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. § 6901, et seq., the Federal Water Pollution Act, 33 U.S.C. § 7401, et seq., the Toxic Substance Control Act, 15 U.S.C. §§ 2601-2629, the Safe Drinking Water Act, 42 U.S.C. §§ 300f-300j, and all similar federal, state and local environmental statutes, ordinances, and the regulations, orders, decrees now or hereafter promulgated there under (collectively the "Hazardous Material Law").

b. Environmental Indemnification: Tenant agrees to exonerate, indemnify, pay and protect, defend (with counsel approved by Landlord), and hold harmless Landlord and its trustees, officers, policyholders, employees, agents, assigns and mortgagee(s) from and against any claims (including, without limitation, third party claims for personal injury or real or personal property damage or damage to the environment), actions, administrative proceedings (including informal proceedings), judgments, actual damages, penalties, fines, costs, liabilities (including sums paid in settlement of claims), interest, or leases, including reasonable attorneys' fees and expenses (including, without limitation, any such fees and expenses consultant fees, and expert fees, together with all other costs and expenses of any kind of nature (collectively, the "Costs") incurred during or after the Term that arise directly or indirectly from or in connection with the presence, suspected presence, release, or suspected release of any Hazardous Material in or into the air, soil, groundwater, or surface water at, on, about, under, or within the project, the Building and/or the Premises, or any portion thereof, or elsewhere, by Tenant or Tenant's agents, representatives, employees, contractors, guests, licensees or invitees. The indemnification provided in this Subparagraph shall specifically apply to and include claims or actions brought by or on behalf of employees, guests, contractors, agents, licensees and/or invitees of Tenant. In the event Landlord shall suffer or incur any such Costs, Tenant shall pay to Landlord the total of all such Costs suffered or incurred by Landlord upon demand by Landlord. Without limiting the generality of the foregoing, the indemnification provided in this Subparagraph shall specifically cover Costs, including capital, operating, and maintenance costs, incurred in connection with any investigation or monitoring of site conditions, any clean-up, containment, remedial, removal, or restoration work required or performed by any federal, state, or local governmental agency or political subdivision or performed by any nongovernmental entity or person because of the presence, suspected presence, release, or suspected release of any Hazardous Material in or into the air, soil, groundwater, or surface water at, on, about under, or within the Building and/or Premises (or any portion thereof), by Tenant or Tenant's agents, representatives, employees, guests, contractors, licensees or invitees and any claims of third parties for loss or damage due to such Hazardous Material.

Landlord agrees to exonerate, indemnify, pay and protect, defend (with counsel approved by Tenant), and hold harmless Tenant and its trustees, officers, policyholders, employees, agents, assigns and mortgagee(s) from and against any claims (including, without limitation, third party claims for personal injury or real or personal property damage or damage to the environment), actions, administrative proceedings (including informal proceedings), judgments, actual damages, penalties, fines, costs, liabilities (including sums paid in settlement of claims), interest, or leases, including reasonable attorneys' fees and expenses (including, without limitation, any such fees and expenses consultant fees, and expert fees, together with all other costs and expenses of any kind of nature (collectively, the "Tenant Costs") incurred during or after the Term that arise directly or indirectly from or in connection with the presence, suspected presence, release, or suspected release of any Hazardous Material in or into the air, soil, groundwater, or surface water at, on, about, under, or within the project, the Building and/or the Premises, or any portion thereof, or elsewhere, by Landlord or Landlord's agents, representatives, employees, contractors, guests, licensees, other tenants or invitees. The indemnification provided in this Subparagraph shall specifically apply to and include claims or actions brought by or on behalf of employees, guests, contractors, agents, licensees, other tenants and/or invitees of Landlord. In the event Tenant shall suffer or incur any such Tenant Costs, Landlord shall pay to Tenant the total of all such Tenant Costs suffered or incurred by Tenant upon demand by Tenant. Without limiting the generality of the foregoing, the indemnification provided in this Subparagraph shall specifically cover Tenant Costs, including capital, operating, and maintenance costs, incurred in connection with any investigation or monitoring of site conditions, any clean up, containment, remedial, removal, or restoration work required or performed by any federal, state, or local governmental agency or political subdivision or performed by any nongovernmental entity or person because of the presence, suspected presence, release, or suspected release of any Hazardous Material in or into the air, soil, groundwater, or surface water at, on, about under, or within the Building and/or Premises (or any portion thereof), by Landlord or Landlord's agents, representatives, employees, guests, contractors, licensees, other tenants or invitees and any claims of third parties for loss or damage due to such Hazardous Material.

c. Remedial Work: In the event any investigation or monitoring of site conditions or any clean-up, containment, restoration, removal, or other remedial work (collectively the "Remedial Work") is required under any applicable federal, state, or local law or regulation, by any judicial order, or by any governmental entity, or in order to comply with any agreements affecting the Building and/or Premises because of, or in connection with, any occurrence or event described above, Tenant shall perform or cause to be performed the Remedial Work in compliance with such law, regulation, order, or agreement. All Remedial Work shall be performed by one or more contractors selected by Landlord, promulgated in accordance with the remediation plan promulgated by an environmental consulting firm selected by Landlord. All costs and expenses of such Remedial Work shall be paid by Tenant including, without limitation, the charges of such contractor(s), the consulting engineer, the environmental consulting firm and Landlord's reasonable attorney's fees and costs incurred in connection with monitoring or review of such Remedial Work. In the event Tenant shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Landlord may, but shall not be required to, cause such Remedial Work to be performed, and all costs and expenses thereof, or incurred in connection therewith shall be Costs within the meaning of Subparagraph above. All such Costs shall be due and payable upon demand by Landlord.

d. Notice of Claims: Tenant shall give notice to Landlord of any claim, action, administrative proceeding (including, without limitation, informal proceedings), or other demand by any governmental agency or other third party involving Hazardous materials, Costs and/or Remedial Work at the time such claim or other demand first becomes known to Tenant. Receipt of any such notice shall not be deemed to create any obligation on Landlord to defend or otherwise respond to any claim or demand.

e. Survival: The provisions of this section shall be in addition to any other obligations and liabilities Tenant may have to landlord at law or equity and shall expressly survive the expiration of the Term or other termination of this Lease.

### **38. MISCELLANEOUS.**

a. Accord and Satisfaction; Allocation of Payments. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent provided for in this Lease shall be deemed to be other than on account of the earliest due Rent, nor shall any endorsement or statement on any check or letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of the Rent or pursue any other remedy provided for in this Lease. In connection with the foregoing, Landlord shall have the absolute right in its sole discretion to apply any payment received from Tenant to any account or other payment of Tenant then not current and due or delinquent.

b. Addenda. If any provision contained in an addendum to this Lease is inconsistent with any other provision herein, the provision contained in the addendum shall control, unless otherwise provided in the addendum.

c. Attorneys' Fees. If any action or proceeding is brought by either party against the other pertaining to or arising out of this Lease, the finally prevailing party shall be entitled to recover all reasonable costs and expenses, including reasonable attorneys' fees, incurred on account of such action or proceeding.

d. Captions, Articles and Section Numbers. The captions appearing within the body of this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Lease. All references to Article and Section numbers refer to Articles and Sections in this Lease.

e. Changes Requested by Lender. Neither Landlord or Tenant shall unreasonably withhold its consent to changes or amendments to this Lease requested by the lender on Landlord's interest, so long as these changes do not alter the basic business terms of this Lease or otherwise materially diminish any rights or increase any obligations of the party from whom consent to such charge or amendment is requested.

f. Choice of Law. This Lease shall be construed and enforced in accordance with the laws of the State of New Mexico.

g. Consent. Notwithstanding anything contained in this Lease to the contrary, Tenant shall have no claim, and hereby waives the right to any claim against Landlord for money damages by reason of any refusal with holding or delaying by Landlord of any consent, approval or statement of satisfaction, and in such event, Tenant's only remedies therefore shall be an action for specific performance, injunction or declaratory judgment to enforce any right to such consent, etc.

h. Corporate Authority. If Tenant is a corporation, each individual signing this Lease on behalf of Tenant represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of the corporation, and that this Lease is binding on Tenant in accordance with its terms. Tenant shall, at Landlord's request, deliver a certified copy of a resolution of its board of directors authorizing such execution.

i. Counterparts. This Lease may be executed in multiple counterparts, all of which shall constitute one and the same Lease.

j. Execution of Lease; No Option. The submission of this Lease to Tenant shall be for examination purposes only, and does not and shall not constitute a reservation of or option for Tenant to lease, or otherwise create any interest of Tenant in the Premises or any other premises within the Building or Project. Execution of this Lease by Tenant and its return to Landlord shall not be binding on Landlord notwithstanding any time interval, until Landlord has in fact signed and delivered this Lease to Tenant.

Furnishing of Financial Statements; Tenant's Representations. Intentionally deleted.

l. Further Assurances. The parties agree to promptly sign all documents reasonably requested to give effect to the provisions of this Lease.

m. Mortgage Protection. Tenant agrees to send by certified or registered mail to any first mortgagee or first deed of trust beneficiary of Landlord whose address has been furnished to Tenant, a copy of any notice of default served by Tenant on Landlord. If Landlord fails to cure such default within the time provided for in this Lease, such mortgagee or beneficiary shall have an additional thirty (30) days to cure such default; provided that if such default cannot reasonably be cured within that thirty (30) day period, then such mortgagee or beneficiary shall have such additional time to cure the default as is reasonably necessary under the circumstances.

n. Prior Agreements; Amendments. This Lease contains all of the agreements of the parties with respect to any matter covered or mentioned in this Lease, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose. No provisions of this Lease may be amended or added to except by an agreement in writing signed by the parties or their respective successors in interest.

o. Recording. Tenant shall not record this Lease without the prior written consent of Landlord. Tenant, upon the request of Landlord, shall execute and acknowledge a "short form" memorandum of this Lease for recording purposes.

p. Severability. A final determination by a court of competent jurisdiction that any provision of this Lease is invalid shall not affect the validity of any other provision, and any provision so determined to be invalid shall, to the extent possible, be construed to accomplish its intended effect.

q. Successors and Assigns. This Lease shall apply to and bind the heirs, personal representatives, and permitted successors and assigns of the parties.

r. Time of the Essence. Time is of the essence of this Lease.

s. Waiver. No delay or omission in the exercise of any right or remedy of Landlord upon any default by Tenant shall impair such right or remedy or be construed as a waiver of such default.

t. Consequential Damages. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL COSTS, LIABILITIES OR DAMAGES, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH, SUCH PARTY'S PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT.

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

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

Landlord's consent to or approval of any act by Tenant requiring Landlord's consent or approval shall not be deemed to waive or render unnecessary Landlord's consent to or approval of any subsequent act by Tenant.

Any waiver by Landlord of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of the Lease.

The individual signing this Lease on behalf of Landlord warrants and represents to Tenant that:

a. Landlord is a corporation organized and validly existing under the laws of the State of New Mexico, with full authority to execute, deliver and perform the obligations of Landlord under this Lease.

b. The individual signing this Lease is duly authorized to execute and deliver this Lease on behalf of Landlord, and this Lease is binding on Landlord in accordance with its terms.

c. Landlord is the owner of the fee simple title to the premises, and as of the date of this Lease, no third party has any right, title or interest adverse to Tenant's right, title and interest in the Premises under this Lease and no mortgage, deed of trust or other restrictions encumber the Premises.

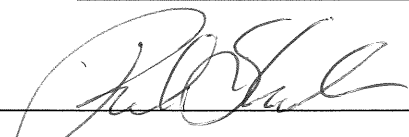
The parties hereto have executed this Lease as of the dates set forth below.

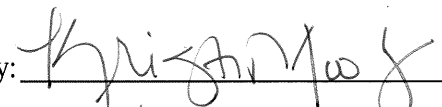
Date: Sept 22, 2015

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

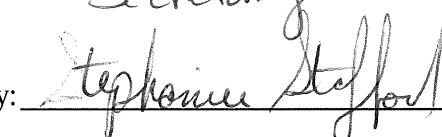
Landlord: **Albuquerque Centre Ltd. Co.**

Tenant: **Windstream Communications, LLC**

By:   
Title: manager

By:   
Title: SVP & Corporate Secretary

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

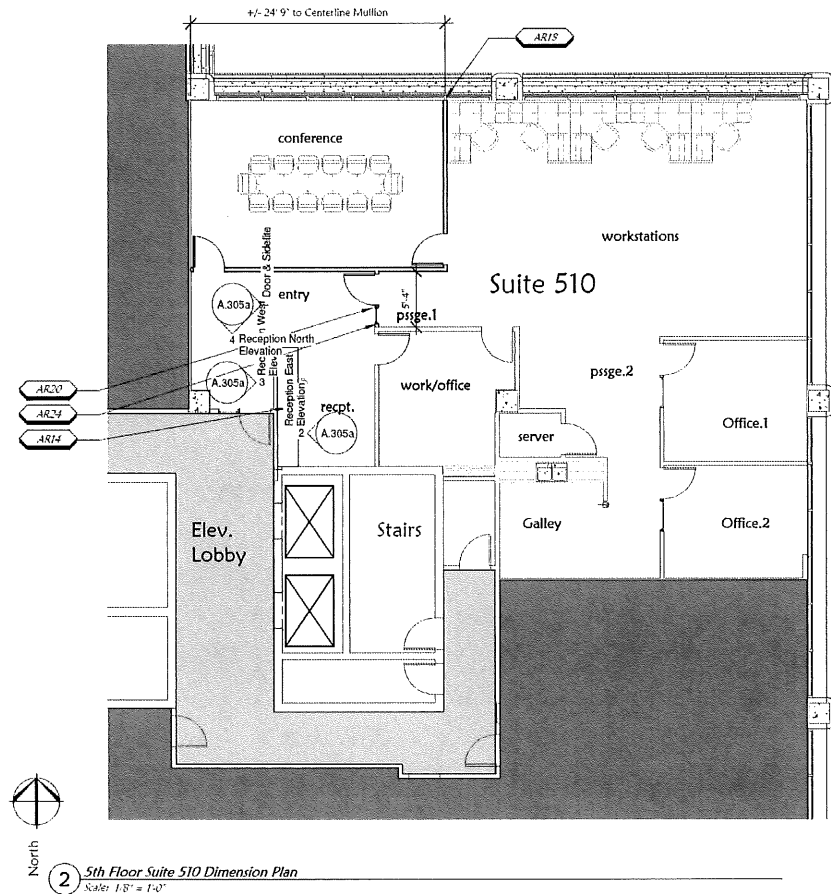
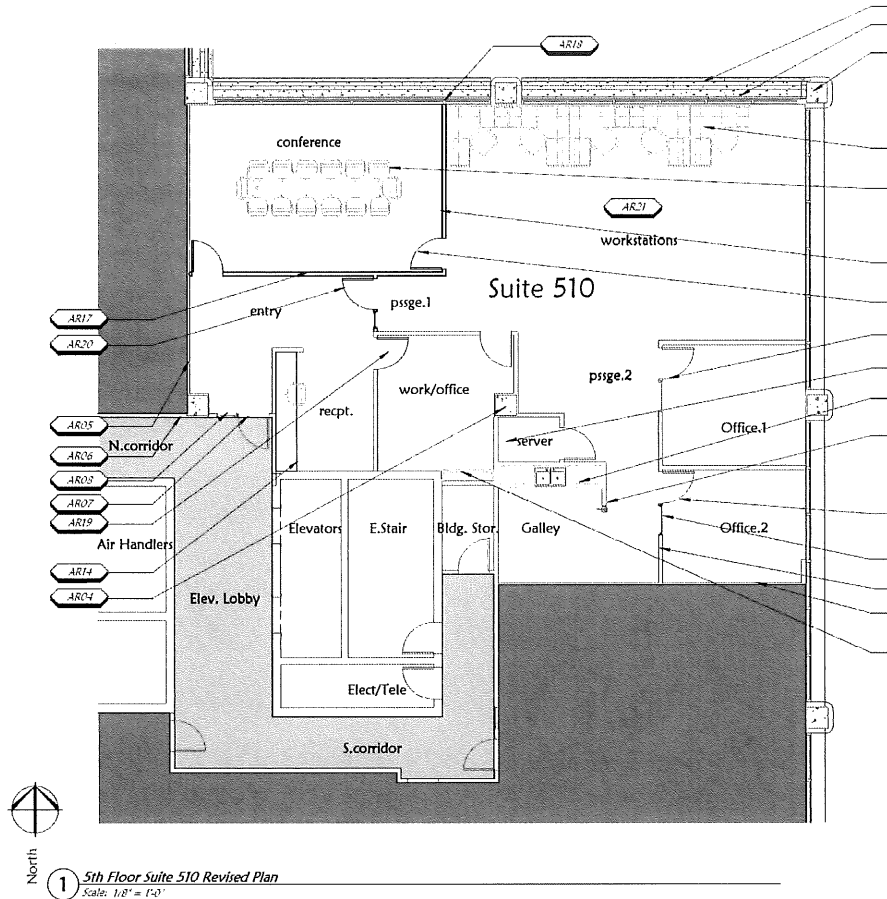
By: 

Title: \_\_\_\_\_

Title: Legal Assistant



Exhibit A.  
Schematic pricing package floor plan showing the Premises A.1  
Scope of Work A.2.



## Albuquerque Centre Suite 510 Keyed Notes

Note Number	Note information
AR01	Existing Exterior Storefront System with Mini-Blinds: Remove & Replace all Damaged Mini-Blinds
AR02	Existing Exterior Pre-Cast Concrete Panels
AR03	Existing Exterior Structural Concrete Columns with Pre-Cast Concrete Panels
AR04	Existing Furred Out Structural Concrete Building Column
AR05	Existing Suite Demising Partition to underside of Suspended Acoustical Ceiling System
AR06	Existing Corridor Partition to underside of Concrete Deck above - Not Required by Current IBC Code for Buildings with Full Sprinkler Coverage
AR07	Existing Building Standard Full Height Door/Frame/Hardware Suite Entry
AR08	Existing Building Standard Full Height Suite Entry Sidelite
AR09	Existing Suite Standard Partitions
AR10	Existing Suite Standard Full Height Door/Frame/Hardware Assembly
AR11	Server Room with Existing Painted Equipment Board
AR12	Existing Accessible Cabinet & 2 Compartment Sink with Garbage Disposal: Test Garbage Disposal for Proper Operation; Repair/Replace if required by current Condition
AR13	Existing Wall Hung 2A10BC Fire Extinguisher; Check for Current Test/Certification; if not Current. Retest/Certify and Reuse in Current Location
AR14	Existing Reception Area Partial Height Partition with New Plastic Laminate Worksurface and Partition Cap: See Details Sheet A.
AR15	Existing Door/Frame/Hardware/Sidelite Assembly with Mini-Blinds
AR16	Existing Rift Sawn Oak Base Cabinet with Plastic Laminate Top: Wood Adjustable Shelves above
AR17	New Building Standard Partition: Verify Suite Standard Partition Thickness & Match: 2 1/2" or 3 5/8" Metal Studs at 24" o.c. with Crimped Sound Insulation in Partition Cavities; 5/8" Gypsum Board @ Each Side; Extend Partition to Underside of Suspended Acoustical Ceiling System @ +/-9'; Notch Tegular Suspended Acoustical Ceiling Tiles around Partition Top
AR18	Unless Noted Otherwise All New Suite Partitions extending to Exterior Storefront System shall be Centered on Storefront System Mullion and be provided with a Partition to Exterior Storefront System Transition Piece: See Details Sheet A.002
AR19	New or Relocated Suite Standard Full Height Door/Frame Assembly - Rift Sawn White Oak or Red Oak to match the majority of the Suite Area Doors
AR20	New Suite Standard Door/Frame/Hardware/Sidelite Assembly; See Details Sheet A.002
AR21	See Dimension & Detail Location Plan this Sheet for Suite Dimensions & Details
AR22	Tenant Furniture
AR23	Tenant Systems Furniture
AR24	Align New Partition with existing Partition
AR25	New Office Sidelite & Mini-Blinds; match Office 1 Sidelite size & configuration; provide with Mini-blinds to match Suite Standard Mini-blinds

## Scope of Work A.2.

**Scope, Pricing, Construction Schedule,  
Additional Information,  
Clarifications & Questions  
Existing Conditions Review:**

*Coordinate all Questions and Existing Conditions Review with Mark Haley  
tele # 505.266.5711 ext. 232  
email m.haley@cauwvels-sturve.com*

**Project Work Hours:**

Normal Business Hours and at other times as approved by Owner

**Demolition**

Demolition of Existing Improvements in Project as indicated

Including:

Specific Partitions, Doors, Frames, Hardware

Damaged Ceiling System Components

*Existing Carpet Tile & Base will be Reused in Place*

**Flooring and Base:**

Additional Interface TacTile Installation Carpet Tile and Sundries if required will be provided by Landlord for Contractor Installation – *where noted*

4" Cove Base to match existing at all new Partitions

**Partitions:**

New Partitions shall be 5/8" Gypsum Board on each side of 2-1/2" or 3 5/8" (6" @ Plumbing Walls) Metal Studs at 24" o.c. to bottom of Ceiling System Cavities of all Partitions will be sound insulated with either ThermaFiber SAFB or Johns Manville 'Quiet Zone' Sound Insulation in the same thickness as the Partition Cavity

All Partitions, both new and remaining existing shall be Braced as required by current IBC Seismic Requirements

Provide Building Standard Partition to Window Mullion Transition Piece where location of Partition to Exterior Wall requires

**Wall Finishes:**

Tape, Bed, Texture all new Partitions; Finish Light Orange Peel or Light Roller

1 Coat Primer; 2 Coats Finish Sherwin Williams 'Harmony' (low VOC) Eg-shel Finish

**Doors, Frames, Sidelites,**

**Borrowlites:**

Doors shall be solid core, Stain Grade Hardwood Veneer White Oak Rift Sawn; 20 Minute Assembly

1-3/4" thick x 3' w x +/- 9' (full Height)

Door Frames; RACO Frames to match Existing

Sidelites to match existing Office Sidelites at Office No.1 and where indicated in Plan & Details

**Doors Hardware:**

Schlage Full Mortise Set to match Existing Hardware

ANSI Lever Hardware; Finish, and Keying to Match Existing

Locksets at all Offices, Lab/Work Areas, Storage, & Break Areas

Suite Keying Sub-Masterkeyed to Building Masterkey System

**Ceiling System:**

Remove & Replace Damaged Ceiling System Components throughout both Suite Areas

Armstrong 'Cortega' 2x2 Ceiling System @ +/- 8' 10"

All Ceiling System Areas shall be Braced as required by current IBC Seismic Requirements

**Albuquerque Centre Suite 510 Revisions**

5<sup>th</sup> Floor Albuquerque Centre

Scope of Work: *page 2 of 4*

**Casework:**

Casework shall be AWI 'Custom' Grade  
New Casework at Reception Area only – Consisting of:  
Wood Cap on a portion of the existing Low Partition  
Plastic Laminate Work Surface & Braces

Existing Hardwood Casework & Shelving in Office/Work Room will be reused as is  
Existing Plastic Laminate Uppers & Lower Cabinets in Galley will be reused as is

**Window Coverings:**

Remove & Replace all Damaged Window Coverings at existing Exterior Windows & Office Sidelites with 1" Mini-Blinds

**HVAC System and Distribution:**

Revise HVAC system as indicated  
Examine all Suite Area RTU's for Current Functioning; Provide Unit Assessment Report & Costs for all required Repairs  
All Existing Components will be Reused in Place and or Relocated as required by revised Suite configuration  
VAV Boxes, Controls, Heat Panels, & Slot Diffusers

**Electrical Power and Distribution:**

Trace all Existing remaining Electrical Circuits  
Provide New Electrical Panel Schedule as required by all impacted Electrical Panels

*New Devices*

Duplex Outlets = 4  
GFI Duplex Outlets = 0  
Single Circuit Duplex Outlets = 0  
Fourplex Outlets = 0  
GFI Fourplex Outlets = 0  
Single Circuit Fourplex Outlets = 0  
Single Circuit Furniture Feeds = 2

**Telecommunications, Data Conduit:**

Provide 3/4" Conduit with Pull String extended 6" above Ceiling for each indicated Drop

*New Devices*

Tele/Data Box & Conduit = 2  
Tele/Data Furniture Feeds = 2

**Telecommunications, Data Wiring:** *System Modifications & Cabling by Tenant***Lighting & Controls:**

Lamp K Temperature and CRI Rating as Noted  
Single Combination Occupancy Sensor & Override Switch; Lutron or Equal  
3-Way Combination Occupancy Sensor & Override Switch; Lutron or Equal  
2x4 Building Standard Light Fixtures – Removed & Relocated or Reused in Place with New Switching as required  
2x2 Building Standard Light Fixtures - Reused in Place  
All Suite Light Fixture Lamps shall be Same K Temperature & CRI Rating

**Suite Accessories & Specialties:**

*None Included within Scope of Work*

**Furniture, Fixtures, & Equipment:**

*By Tenant*

**Albuquerque Centre Suite 510 Revisions**

5<sup>th</sup> Floor Albuquerque Centre  
Scope of Work: *page 3 of 4*

**Fire Protection Sprinkler System:**

System Revised as Required by New Suite Configuration

**Life Safety Fire Alarm System:**

System Revised as Required by New Suite Configuration

**Security /Access Control System:**

*No Work included within Scope of Work*

**Project Closeout:**

Contractor to supply the following prior to receipt of Final Payment

Copy of Contractor Permit Set along with all Inspection Tags

Complete As-builts of Plumbing, Mechanical, and Electrical Work

O & P Manuals for all Fixtures and Equipment

Complete Lien Releases

*End of Scope of Work*

**Albuquerque Centre Suite 510 Revisions**

5<sup>th</sup> Floor Albuquerque Centre

Scope of Work: *page 4 of 4*

# Exhibit B SITE PLAN of Project

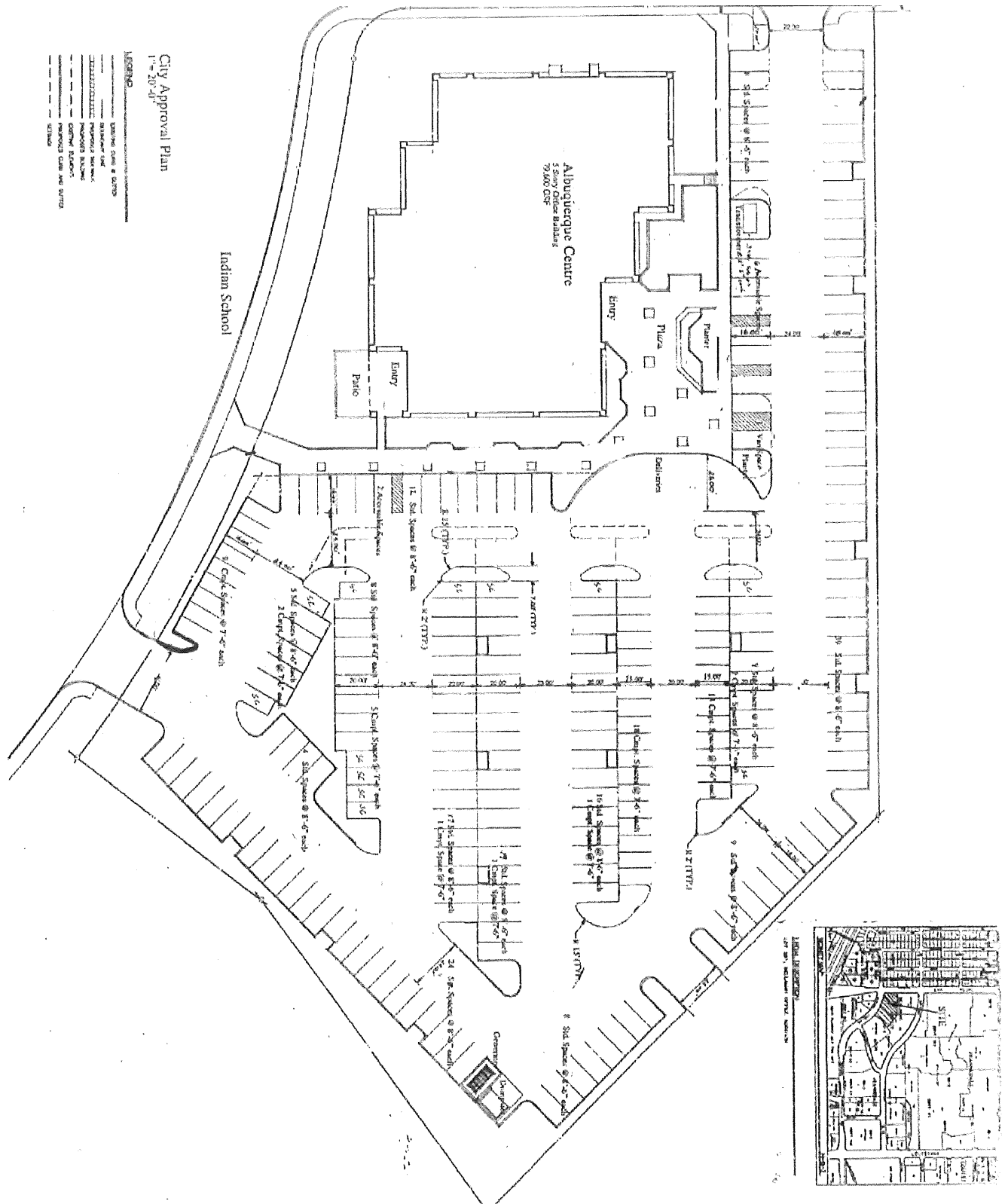


Exhibit C  
BUILDING STANDARD WORK LETTER

Landlord shall provide Turnkey Tenant Improvements (“Tenant Improvements”) per Building standards, at its expense, pursuant to the attached plans (Exhibit A) and Landlord’s and Tenant’s mutual approval of Scope of Work (“Approved SOW”) and Schematic pricing package drawings (“Approved Drawings”) prior to lease execution.

Landlord shall provide, at its expense, all interior architectural space planning, mechanical, electrical, and plumbing (“MEP”) documents as well as professional stamped construction documents (“CDs”) and other related services. Landlord and Tenant agree that time is of the essence in arriving at Approved Plans and Specifications, Contract Price and the Total Cost of Construction.

Upon Lease execution, Landlord’s architect shall use the Approved SOW and Approved Drawings to generate CDs and submit to Tenant for review. Tenant shall provide approval or comments within ten (10) business days after delivery of the CDs. Any costs associated with Tenant making changes to the CDs that deviate from the approved SOW and Drawings, such as changing the design, finishes, materials or layout, shall be Tenant’s sole expense. Tenant shall provide written approval of final CDs, however, if Tenant fails to provide feedback within ten (10) business days, Landlord shall consider the CDs final and approved by Tenant and shall submit the CDs to the City of Albuquerque (“City”) for permitting purposes. Any change order(s) subsequent to the final CDs as permitted by the City shall be at Tenant’s sole cost and the associated delays will be Tenant delays.

Suite 510 The Approved Drawing is attached hereto as Exhibit A.1, and the Approved SOW is attached hereto as Exhibit A.2, but generally includes the following:

- Two (2) Private Offices
- Open space for five (5) cubicles sized 6’x6’ (cubicles to be provided by Tenant)
- Conference Room to accommodate 15-20 people
- Reception
- Kitchenette/ Break Area
- Copy / Fax Area
- Small server closet

Except as otherwise expressly provided in this Section Tenant takes the Premises “as is” and costs for any improvements other than those specified in the Approved SOW and Approved Drawing as defined in Exhibit A are the sole responsibility of and to be paid for by Tenant.

Specifically excluded from Landlord’s costs for Tenant Improvement are Tenant’s Furniture, Fixtures and Equipment (FF&E) which is movable furniture, fixtures or other equipment that have no permanent connection to the structure of the building or utilities, but does not include built-in shelving, built in cubicles or built in reception desk. Tenant is responsible for procuring and installing its modular systems furniture, telecommunication systems and equipment, such as cabling, phones, internet, and Premises security equipment and services. Tenant shall have the right to remove and retain all FF&E and other fixed appurtenances including, but not limited to, trade fixtures, wall-mounted cabinets, computer and/or electronic equipment upon vacating the premises, provided that the premises will not be materially damaged; however, if such damage shall occur, Tenant shall repair such damage at its expense. Landlord shall have the right to



require Tenant to remove cabling upon the expiration of the lease or as extended or terminated provided herein.

Also excluded from Landlord's Tenant Improvement costs are Tenant's other personal expenses, which include but are not limited to the following: moving expenses, costs of Tenant's personnel, Tenant's attorneys' fees and expenses, accounting fees and bookkeeping expenses and Tenant's insurance premiums and Tenant's general administrative and overhead expenses.

Tenant shall not receive any fee for coordination, supervision, profit, overhead or general conditions incurred or performed by Tenant in connection with the Tenant Improvements to be performed in the Premises.

For the purposes of this Lease the Base Building is defined as the lobbies, stairwells (except if internal to a particular premises), elevators, corridors and rest rooms in the common areas of the Building, the windows in the Building, the mechanical, life safety, plumbing and electrical equipment serving the Building and the Premises up to the point of connection with facilities exclusively serving the Premises, and the structural elements of the Building.

At no charge to Tenant, landlord will provide early access to the Premises thirty (30) days prior to Commencement, subject to coordination with Landlord and Landlord's contractors, for Tenant to install telecommunication systems and prepare for move.

## Exhibit "D"

### ALBUQUERQUE CENTRE

#### Rules and Regulations

**1. Advertising:** Landlord shall have the right to prohibit any advertising by any tenant which, in Landlord's opinion, tends to impair the reputation of the building or its desirability as a building for offices, and upon written notice from Landlord, such tenant shall refrain from or discontinue such advertising.

**2. Business Conducted on Premises:** Except with the prior written consent of the Landlord, no tenant shall sell or permit the sale at retail of newspapers, magazines, periodicals, or theater tickets in or from the demised premises, nor shall any tenant carry on or permit or allow any employee or other person to carry on the business of stenography, typewriting, or any similar activity in or from the demised premises for the service or accommodation of occupants of any other portion of the building or any manufacturing of any kind or the business of a public barber shop, beauty parlor, manicurist or chiropodist, or any employment agency business, nor shall any tenant advertise for common labor giving an address at said premises, or conduct any business other than that specifically provided for in the tenant's lease. Landlord will not permit the operation of medical marijuana related businesses in the Building, including the writing and distribution of medical marijuana prescriptions.

**3. Halls and Stairways:** The sidewalks, halls, passages, elevators, and stairways shall not be obstructed by any of the tenants or used by them for any purpose other than for ingress to and egress from their respective premises. The halls, passages, entrances, elevators, stairways, balconies, and roof are not for the use of the general public, and Landlord shall in all cases retain the right to control and prevent access thereto of all persons whose presence, in the judgment of Landlord, shall be prejudicial to the safety, character, reputation, and interests of the building and its tenants, provided that nothing herein contained shall be construed to prevent such access to persons with whom tenants normally deal in the ordinary course of Tenants' businesses unless such persons are engaged in illegal activities. No tenant and no employee of any tenant shall go upon the roof of the building without the written consent of Landlord.

**4. Nuisances:** Tenant shall not accept barbering or boot blacking services in the premises, except from persons authorized by Landlord and at hours and under regulations fixed by Landlord.

**5. Musical Instruments, Etc.:** No tenant shall install or operate any phonograph, musical instrument, radio receiver, or similar device in the building in such manner as to disturb or annoy other tenants of the building or the neighborhood. No tenant shall install any antennae, aerial wires, or other equipment outside the building without the prior written approval of Landlord.

**6. Locks:** Additional locks or bolts of any kind may not be placed upon any of the doors by Tenant herein, without Landlord's written approval. A security deposit (for any key that opens the main entrance doors to the building) will be required of any Tenant or employee of Tenant who is authorized by Tenant to possess such key. Tenant must, upon the termination of Tenant's tenancy restore to Landlord all keys of stores, offices, and toilet rooms either furnished to or otherwise procured by Tenant, and in the event of the loss of any keys so furnished Tenant shall pay to Landlord the cost thereof.

**7. Window Shades:** No tenant will install blinds, shades, awnings, or other form of inside or outside window covering, or window ventilators or similar devices without the prior written consent of Landlord.

**8. Obstructing Light, Damage:** The sash doors, sashes, windows, glass doors, lights, and skylights that reflect or admit light into the halls or other places of the building shall not be covered or obstructed. The toilets and urinals shall not be used for any purpose other than those for which they were constructed, and no rubbish, newspapers or other substance of any kind shall be thrown into them. Waste and excessive or unusual use of water shall not be allowed. No tenant shall mark, drive nails, screw or drill into, paint, or in any way deface the walls, ceilings, partitions, floors, wood, stone, or iron work. The expense of any breakage, stoppage, or damage resulting from a violation of this rule by a tenant shall be borne by such tenant. Tenants shall be permitted to hang pictures on the walls of tenant's offices, but it must be done in a workmanlike manner and in such a way as not to damage or deface such walls in an abnormal manner.

**9. Signs:** Except for signs approved by Landlord if provided in this lease, no sign, advertisement, notice, or other lettering shall be inscribed, painted, exhibited, or affixed on or to any part of the outside or inside of the building.

**10. Safes, Moving Furniture, Etc.:** Landlord shall prescribe the weight, size and position of all safes and other property brought into the building, and also the times of moving the same in and out of the building, and all such moving must be done under the supervision of Landlord. Landlord will not be responsible for any loss of or damage to any such safe or property from any cause; but all damage done to the building by moving or maintaining any such safe or property shall be repaired at the expense of tenants. No furniture, package, or merchandise will be received in the building or carried up or down in the elevators, except between such hours, in such elevators, and in such manner as shall be designated by Landlord.

**11. Wiring:** Electric wiring of every kind shall be introduced and connected as directed by landlord and no boring or cutting for wires shall be allowed except with the prior consent of Landlord. The location of telephone, call boxes, and similar equipment shall be subject to approval by Landlord.

**12. Requirements of Tenants:** The requirements of tenants will be attended to only upon application at the office of Landlord. Landlord's employees shall not perform any work nor do anything outside of their regular duties unless under special instruction from the office, and shall not admit any persons (tenants or otherwise) to any office without instructions from the office of Landlord.

**13. Access to Building:** Landlord reserves the right to close and keep locked, all entrances and exit doors of the building during hours Landlord may deem advisable for the adequate protection of the property. Use of the building and premises before or after normal business hours or at any time during Saturdays, Sundays, and legal holidays shall be permissive and subject to the rules and regulations Landlord may prescribe. Tenants, tenant's employees, agents or associates, or other persons entering or leaving the building at any time, when it is so locked, may be required to sign the building register, and the watchman or Landlord's agent in charge shall have the right to refuse admittance to any person into the building without satisfactory identification showing such person's right of access to the building at such time. Landlord assumes no responsibility and shall not be liable for any loss or damage resulting from the admission of any authorized or unauthorized person to the building.

**14. Improper Conduct:** Landlord reserves the right to exclude or expel from the building any person, including any tenant, who in the judgment of Landlord is intoxicated or under the influence of liquor or drugs, or who shall do any act in violation of the rules and regulations of the building.

**15. Storage:** No tenant shall conduct any auction or store goods, wares, or merchandise on the premises. Articles of unusual size and weight shall not be permitted in the building.

**16. Vehicles, Animals, Refuse:** Tenants shall not allow anything to be placed on the outside window ledges of the premises or to be thrown out of the windows of the building. No bicycles or other vehicles, and no animal shall be brought into the offices, halls, corridors, elevators or any other part of the building by tenants or the agents, employees or invitees of tenants, and tenants shall not place or permit to be placed, any obstruction or refuse in any public part of the building.

**17. Equipment Defects:** Tenants shall give Landlord prompt notice of any accidents to or defects in the water pipes, gas pipes, electric lights and fixtures, heating apparatus, or any other service equipment.

"Exhibit E"  
**GUARANTY OF LEASE**

THIS GUARANTY is made as of Sept. 22, 2015, by Windstream Services, LLC, a Delaware limited liability company, having an address at 4001 N Rodney Parham Road, Little Rock, AR 72212, Attention: General Counsel ("**Guarantor**"), to Albuquerque Centre Ltd. Co. a New Mexico limited liability company ("**Landlord**"), having an address at 8814 Horizon Blvd. NE, Suite 400, Albuquerque, NM 87113.

WHEREAS, Landlord has leased to Windstream Communications, LLC, a Delaware limited liability company corporation ("**Tenant**"), certain office space (the "**Tenant Space**") in a building located at 6001 Indian School Rd. NE, Albuquerque, NM 87110, pursuant to that certain Lease by and between Landlord and Tenant dated as of Sept 22, 2015 (the "**Lease**");

WHEREAS, Guarantor is materially benefited by the Lease, and Guarantor's executing this Guaranty is a material inducement to Landlord to enter into the Lease.

NOW THEREFORE, in consideration of the premises, and of other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees with Landlord as follows:

**1. GUARANTY.** Guarantor hereby absolutely and unconditionally guarantees to Landlord, its successors and assigns, the prompt and full payment of all rent and other payments to be made by Tenant under the Lease (the "**Payment Obligations**"), for which Guarantor shall be liable as primary obligor as if Guarantor had executed the Lease as Tenant. Guarantor hereby waives any notice of nonobservance, nonpayment or nonperformance or proof of notice or demand. Guarantor agrees that in the event of a default by Tenant in the Payment Obligations, Landlord may proceed against the Guarantor before, after or simultaneously with proceeding against Tenant.

**2. NO TERMINATION.** This Guaranty shall not be terminated, affected, or impaired in any manner by reason of: (1) the assertion by Landlord against Tenant of any of the rights or remedies reserved to Landlord pursuant to the provisions of the Lease; (2) the commencement of summary or other proceedings by or against Tenant, including any bankruptcy or other insolvency proceeding, whether voluntary or involuntary, affecting the rights of creditors and or resulting in the termination of the Lease by the Tenant; (3) the failure of Landlord to enforce any of its rights against Tenant; or (4) the granting by Landlord of any indulgence or extensions of time to Tenant.

**3.** Guarantor hereby waives presentment, notice of dishonor, protest and notice of non-payment or non-performance. Notwithstanding anything to the contrary contained herein, the liability of Guarantor shall not be affected by (a) any defense based upon an election of remedies by Tenant that destroys or otherwise impairs the subrogation rights of Guarantor or the right of Guarantor to proceed against Tenant for reimbursement; (b) any duty on the part of Tenant to disclose to Guarantor any facts Tenant may know about any affiliate or subsidiary of Tenant, it being agreed that Guarantor is fully responsible for being and keeping informed of the financial condition of Tenant and each subsidiary and affiliate thereof, and of all circumstances bearing on the risk of non-payment of the payment obligations; (c) any defense arising from the bankruptcy or insolvency of Tenant or any subsidiary or affiliate thereof; (d) any defense afforded guarantors based on suretyship or impairment of collateral under applicable law, other than payment and performance in full of Tenant's obligations under the Lease.

**4.** Within twenty (20) days after Landlord's written request, Guarantor agrees to execute and deliver to Landlord a written statement certifying any reasonable matter concerning this Guaranty or the Lease as Landlord may reasonably request.

**5. GENERAL PROVISIONS.**

**A.** Guarantor further covenants and agrees that: (1) Guarantor shall be bound by all the provisions, terms, conditions, restrictions and limitations concerning the Payment Obligations contained in the Lease which are to be observed or performed by Tenant thereunder, the same as if Guarantor were named therein as Tenant; and (2) this Guaranty shall be absolute and unconditional and shall be in full force and effect with respect to any amendment, addition, renewal, hold over, assignment, sublease, transfer or other modification of the Lease whether or not Guarantor shall have knowledge of, shall have been notified of, or has agreed or consented to the same.

**B.** If Landlord at any time is compelled to take action, by legal proceedings or otherwise, to enforce or compel compliance with the terms of this Guaranty, the undersigned shall, in addition to any other rights or remedies to which Landlord may be entitled hereunder or as a matter of law or in equity, pay to Landlord all costs, including reasonable attorney's fees and expenses, incurred or expended by Landlord in connection therewith.

**C.** Guarantor will remain bound by this Guaranty, unless Guarantor and Landlord each expressly agree to the contrary, notwithstanding: (i) the granting of time, credit or forbearance to Tenant; or (ii) the release or waiver of any rights of Landlord; or (iii) the rejection of the Lease pursuant to 11 U.S.C. §365 of the U.S. Bankruptcy Code. Notwithstanding anything herein to the contrary, in connection with the fulfillment of the Payment Obligations, Guarantor shall have the same defenses, claims, and rights granted to Tenant under the Lease.

**D.** All duties and obligations of "Guarantor" pursuant to this Guaranty shall be binding upon the successors, heirs and assigns of the undersigned and shall inure to the benefit of Landlord and its successors and assigns. If this Guaranty is executed by more than one guarantor, the obligations of such Guarantors shall be joint and several.

**E.** This Guaranty shall be governed by and construed in accordance with the laws of the State of New Mexico.

**F.** Guarantor agrees that, to the extent that Tenant makes a payment or payments to Landlord or Landlord receives any proceeds of collateral, which payment or payments or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or otherwise are required to be repaid to Tenant, its estate, trustee, receiver or any other party, including, without limitation, under any bankruptcy law, state or federal law, common law or equitable cause, then to the extent of such payment or repayment, the obligations of Tenant or part thereof which has been paid, reduced or satisfied by such amount shall be reinstated and continued in full force and effect as of the date such initial payment, reduction or satisfaction occurred.

**G.** Guarantor waives and shall have no right of subrogation, indemnification, reimbursement or exoneration with respect to the Payment Obligations or any rights of contribution from any other guarantors of the Payment Obligations.

**H.** A demand for Guarantor's performance hereunder or other communication in connection with this Guaranty must be in writing and sent to Guarantor at the address specified below or if the addressee notifies Landlord of another address within the continental United States, then to that address. The address of Guarantor is as follows:

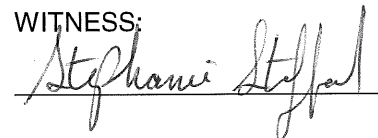
Windstream Corporation  
4001 N Rodney Parham Road  
Little Rock, AR 72212  
Attention: General Counsel

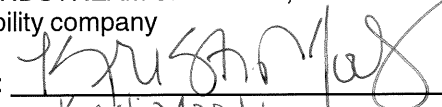
Any notices provided hereunder shall be in writing sent by first-class mail, return receipt requested, or by overnight carrier to the Guarantor at the address set forth above.

**6. TIME OF ESSENCE.** Time is of the essence of this Guaranty.

**7. ENTIRE AGREEMENT.** This Guaranty and any attached addenda constitute the entire Guaranty and no oral statement or amendment not reduced to writing and signed by Guarantor shall be enforceable.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be executed effective as of the date first above written.

WITNESS:  


GUARANTOR:  
WINDSTREAM SERVICES, LLC a Delaware limited liability company  
By:   
Name: Kristin Moody  
Title: SVP & Corporate Secretary

**Addendum F**

**ADDENDUM TO OFFICE BUILDING LEASE**

This ADDENDUM is attached to and made a part of the Office Building Lease (“Lease”) dated \_\_\_\_\_, 2015, by and between **Albuquerque Centre Ltd. Co.** (“Landlord”) and **Windstream Communications, LLC** (“Tenant”) for the Premises known as Suite 510 at 6001 Indian School Rd. NE in Albuquerque, New Mexico. If there are any conflicts between this ADDENDUM and Lease, said ADDENDUM shall supersede.

**Term / Commencement.** The Initial Term is sixty three (63) months commencing on the latter of i) November 1, 2015 or ii) substantial completion of the Tenant Improvements, and expiring sixty three (63) months thereafter.

At no charge to Tenant Landlord will provide early access to the Premises thirty (30) days prior to commencement, subject to coordination with Landlord and Landlord’s contractors, for Tenant to install telecommunication systems and prepare for move.

**Base Rent**

The following base rental rate is on a full service basis with a 2016 Base Year:

Mo.	\$/RSF	per Month
*2--12	\$18.25	\$4,262.90
*14--24	\$18.75	\$4,379.69
*26--36	\$19.25	\$4,496.48
37--48	\$19.75	\$4,613.27
49--60	\$20.25	\$4,730.06
61--63	\$20.75	\$4,846.85

\* Rent for months 1, 13 and 25 shall be abated. Within five (5) business days of Tenant’s execution of this Lease, Tenant shall pay Landlord the first Monthly Installment of Base Rent due, which is Month 2, plus any prorated portion for any partial month.

**Options to Extend.**

Landlord will grant Tenant Two (2) options to extend the lease term for a period of up to five (5) years with one hundred eighty (180) days prior written notice. The terms and conditions, including the base rental rate, tenant improvement allowance and other concessions will be based upon the terms and conditions of recently executed leases of similar size and use to Tenant’s in buildings of similar age and class and upon other general market conditions in the vicinity.

**Right of First Offer:**

Tenant shall have an Ongoing Right of First Offer, if contiguous space comes available during the Term. Landlord shall notify Tenant, in writing, when such space becomes available, and Tenant shall have 10 business days to commence negotiations for such space (“Additional Space”). If the parties are unable to agree upon such terms and conditions within 30 days, Landlord may lease the Additional Space to other tenants. The rate for the Additional Space shall be at the then current rental rate for the Premises, and Landlord shall provide pro-rata leasehold

improvements for each year remaining on the Lease Term. Provided, however, no tenant improvement allowance will be due if less than two (2) years are remaining on the Lease Term at the time Base Rent commences for the Additional Space.

If Tenant desires to expand, and no adjacent space is available, Landlord will work diligently to expand Tenant in another space of the building. If no adjacent space is available in the building and Landlord cannot accommodate Tenants need to expand elsewhere in the building, Tenant shall have the right to Terminate after year 3 by paying unamortized Tenant Improvements and Commissions amortized at 8% per annum on a straight line basis.

**Signage.**

Landlord, at its cost, will provide to Tenant Building standard interior building directory, suite, and monument signage at no extra charge.

Each of these terms and conditions are hereby incorporated into the Lease.

Agreed & Accepted:

Agreed & Accepted:

**Landlord**

**Tenant**

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

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

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

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



17 February 2009

# Albuquerque Centre

6001 Indian School Road NE  
Albuquerque, New Mexico 87110

## Building Standards and Qualities of Finishes

<b>Total Building Area:</b>	5 Floors at approximately 14,500 square feet per floor
<b>Flooring and Base:</b>	Interface 19.5" square Carpet Tiles with TacTile installation 4" Resilient cove Base throughout
<b>Partitions:</b>	5/8" Gypsum Board on each side of 3-5/8" Metal Studs at 24" o.c. to bottom of Suspended Ceiling System; Cavities of all Partitions will be sound insulated with either ThermaFiber SAFB or Johns Mansville Sound Insulation in the same thickness as the Partition Cavity
<b>Wall Finishes:</b>	Finish Light Orange Peel or Light Roller to match Existing Finishes Sherwin Williams 'Harmony' ( <i>low VOC</i> ) Eg-shel Finish
<b>Doors, Frames, Sidelites, Borrowlites:</b>	Full Height Rift Sawn Clear Finished Oak Door solid core 1-7/8" thick x 3'-0" Door Frames and Borrow Lites RACO; Pre-finished Aluminum
<b>Doors Hardware:</b>	ANSI compliant Schlage Full Mortise Set Chrome Finsih Lever Hardware
<b>Ceiling System:</b>	Repair and Replace Tiles and Grid as Required by current Condition and Demolition Suspended Acoustical Ceiling System @ +/- 8'-10" AFF; Match Existing Armstrong 2 x 2 tiles with 2 x 2 grid; Cortega Pattern; Cope all Tiles at Partition Head Fill and Repaint Grid and Tiles as required to remove all signs left from Demolition of previous Partitions
<b>Window Coverings:</b>	1" Mini Blinds at all Exterior Windows
<b>Plumbing Fixtures :</b>	Men's Rest Room: 3 Water Closets, 2 Urinals; 3 Lavatories Women's Rest Room; 4 Water Closets; 3 Lavatories
<b>HVAC System and Distribution:</b>	Variable Air Volume Boxes; approximately 42 Zones/1 Zone per 350 Rentable Square Feet Exterior Zone Heating by Electrical Heat Panel Continuous Return Air Plenum Full Outside Air Capability
<b>Electrical Power and Distribution:</b>	120/208 and 277/480 Volt Service Panels Located on each Floor
<b>Telecommunications Data Wiring:</b>	Electrical and Cabling Closets located on each Floor
<b>Lighting:</b>	Tenant Area 2 x 4 Fluorescent Prismatic Lens Light Fixtures 3 3200K Lamps New 2 switch Light Switches ( Inboard and Outboard Lamps ) Common Area 2 x 2 Fluorescent Parabolic Lens Light Fixtures
<b>Fire Protection Sprinkler System:</b>	Complete Fire Sprinkler System Coverage in All Areas of the Building
<b>Life Safety Fire Alarm System:</b>	Complete Life Safety Fire Alarm System Coverage in All Areas of the Building
<b>Furniture, Fixtures, &amp; Equipment:</b>	First Floor Lobby Common Area Furniture Setting

*End of Building Standards and Quality of Work*

Albuquerque Centre  
Building Standards and Quality of Materials page 1 of 1